



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Conduct Public Hearing to consider appeals filed by Wal-Mart Stores, Inc., Browman Development Company, Lodi First, and PAQ, Inc. regarding the decision of the Planning Commission to deny Use Permit (U-02-12) concerning a Use Permit for the construction of a commercial center in a C-S, Commercial Shopping District, and the sale of alcoholic beverages at the proposed Wal-Mart Supercenter; Vesting Tentative Parcel Map (03-P-001) concerning the creation of 12 parcels for the project; and Site Plan and Architectural Review (08-SP-08) concerning site plan and architectural review of a proposed Wal-Mart Supercenter at the proposed Lodi Shopping Center located at 2640 West Kettleman Lane (collectively "the Project"); and further consider approval of the Project and consider adopting findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

MEETING DATE: May 13, 2009

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Conduct Public Hearing to consider appeals filed by Wal-Mart Stores, Inc., Browman Development Company, Lodi First, and PAQ, Inc. regarding the decision of the Planning Commission to deny Use Permit (U-02-12) for the construction of a commercial center in a C-S, Commercial Shopping District, and the sale of alcoholic beverages at the proposed Wal-Mart Supercenter; Vesting Tentative Parcel Map (03-P-001) concerning the creation of 12 parcels for the project; and Site Plan and Architectural Review (08-SP-08) concerning site plan and architectural review of a proposed Wal-Mart Supercenter at the proposed Lodi Shopping Center located at 2640 West Kettleman Lane (collectively "the Project"); and further consider approval of the Project and consider adopting findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

BACKGROUND INFORMATION: On April 8, 2009, the Planning Commission held a Public Hearing to consider the applications that have been filed regarding the Lodi Shopping Center project. The specific applications would enable the project to move forward. The Use Permit requests are required by the Commercial Shopping (C-S) zoning designation. An additional Use Permit is required in order for Wal-Mart to sell alcoholic beverages within its store. The Vesting Tentative Map allows for the subdivision of the property consistent with the number of buildings planned for the site and the site plan and architectural review is required for any building constructed on the property. In this case, just the Wal-Mart store is being reviewed at this time. Finally, the Planning Commission considered the required findings and statements of overriding considerations which link the project approvals to the certified Final Revised Environmental Impact Report.

APPROVED: _____

Blair King, City Manager

The Planning Commission took testimony from 13 people including the project applicants and opponents. As with the previous meetings on this project, the focus of the comment was on the advantage or disadvantage of having a Wal-Mart Supercenter, not necessarily the details of the specific requests. The main issue raised by the attorneys representing Lodi First and Citizens for Open Government was on the findings and statements of overriding considerations which relate back to the action taken by the City Council to certify the environmental document. After consideration of the testimony, the Planning Commission voted a 3-3 tie. As the City Council is aware, an action approving a project requires an affirmative vote of the majority of the Planning Commission, so the end result of the Commission's tie vote was denial of the requests. The City has received four appeals as noted in the title of this action. Two appeals have been filed on behalf of the applicants and two requests were filed by the opposition to the project.

PROJECT DESCRIPTION :

Use Permit and Tentative Map Analysis:

Approximately 18 years ago, the City's General Plan designated the southwest corner of West Kettleman Lane/State Route 12 and Lower Sacramento Road for the construction of large-scale retail development. Since that time, the centers on the other three corners have built out as envisioned. Major national retailers such as Wal-Mart, JCPenney, Target, and Lowe's have occupied these corners. The Lodi Shopping Center is proposed on the remaining fourth corner to be anchored by a Wal-Mart Supercenter. This type and scale of development is consistent with the activity that has occurred at the other three corners.

The City's Zoning Code requires that all plot plans for projects within the C-S, Commercial Shopping District receive Planning Commission approval. Over time, this review has been done through the Use Permit process. The Zoning Code also requires Use Permit approval for the sale of alcoholic beverages. The applicant is requesting a Use Permit and a Vesting Tentative Map in order to divide the property into 12 lots that will correspond to the number of buildings anticipated for the project.

The proposed project includes the construction of approximately 339,966 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 12 buildings of varying sizes. The primary use will be a Wal-Mart Supercenter that will occupy approximately 226,868 square feet of floor area, including approximately 70,000 square feet for grocery sales, 19,889 square feet for a garden center (including outdoor fenced area), and 6,437 square feet for an auto service shop. The Wal-Mart Supercenter will not include the use of outdoor metal storage containers, and will not include a seasonal sales area in the parking lot.

A moderate sized retailer will occupy approximately 35,000 square feet on pad 12 in the southeast corner of the site. The remaining 11 buildings will range in size from 3,200 square feet to 14,788 square feet. Three of the 11 buildings will be occupied by fast food franchises, with another two buildings consisting of sit-down restaurants, and the remaining buildings occupied by such retail uses such as financial services/bank, professional/business services, and other retail sales and services.

The uses, layout and design of the shopping center have remained the same as that presented to and approved by the Planning Commission in December 2004. The Wal-Mart building is located at the southwestern corner of the site, with 11 freestanding buildings located along Kettleman Lane and Lower Sacramento Road to the north and east. In the center of the shopping center is the main parking lot. The proposed vesting tentative map includes the Wal-Mart store and all corresponding parking in the largest lot (lot 12, 18.3 acres), with each of the remaining 11 buildings on their own lot with associated parking. These other lots are generally one+/- acre, ranging from 0.53 acres (lot 8) to 2.6 acres (lot 11). Internal travel lanes, parking medians and planters are located throughout the interior. Access to the Center is mainly from Westgate Drive and Lower Sacramento Road, with right turn in and out only from Kettleman Lane. As shown on the site plan, significant public improvements are required in order to build this project, as detailed in the draft

conditions in the accompanying resolution of approval. The applicant will be responsible for the construction of Westgate Drive from Kettleman Lane to the southerly project boundary as well as the frontage improvements on Kettleman Lane and Lower Sacramento Road. The applicant is also responsible for the approximately four-acre site across Westgate Drive to be used for storm water detention, all associated project right-of-way dedications, utility easements, engineering reports and studies, and fees. An encroachment permit from CalTrans for Kettleman Lane/State Route 12 will be needed.

Conditions in the draft Resolution cover fire safety, outdoor storage or display of merchandise, shopping cart storage, security and exterior lighting. Consistent with the prior approval by the City Council, conditions relative to re-use of the existing Wal-Mart building are also included. Further, even though a CEQA environmental impact as to urban decay or physical deterioration from the Lodi Shopping Center cannot be made, the City Council can make a decision that the economic effects of the Center on the Downtown should be addressed. To this end, staff is proposing a condition to require the Lodi Shopping Center to invest in the Downtown area. The aggregate value of the capital improvement must exceed \$700,000. Finally, a condition is included to incorporate all mitigation measures as specified in the certified FREIR.

The Use Permit will allow the Wal-Mart Supercenter to sell alcoholic beverages. No Use Permit for alcohol for any of the freestanding buildings has been applied for or is under consideration. The tenants of these freestanding buildings are not known to staff and have not been included in this request. Any such request in the future would require a Planning Commission hearing at that time when the specific details of the requesting business are known. The City Council has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart Supercenter. As such, staff is recommending that the City Council approve the request to sell alcohol.

The second Use Permit request emanates from the C-S zoning designation which specifically states that a "detailed plot plan of the proposed construction" be submitted to the Planning Commission. The design standards identified in the code are as follows:

- A. The site shall be designed and used as a unit, regardless of ownership of the land and buildings.
- B. All streets bordering the site shall be fully dedicated and improved by the developer.
- C. The design of the development shall include the landscaping of buildings and parking areas, the screening of nearby residential areas, and the enclosure or shielding of trash and disposal areas. Lights and signs shall be located to avoid disturbance to residential areas.
- D. Driveways, parking areas and loading areas shall be located so as to minimize traffic interference.

Section 17.58 of the Municipal Code adds additional design requirements to the project. These standards were adopted in 2004 specifically to deal with the design of large-scale retail establishments like Wal-Mart. The applicant has met or exceeded each of these standards as presented and conditioned, and staff recommends approval of the request.

As previously discussed in the analysis, a vesting tentative map approval is requested to divide the site into 12 lots. The applicant has met the requirements of the City's subdivision ordinance and the State Subdivision Map Act, and staff recommends approval of the map.

SPARC Review:

Along with the plot plan and tentative map for the Lodi Shopping Center, preliminary elevations and colors for the Wal-Mart Supercenter have been submitted. No elevations or colors, landscaping plan, signage plan, materials, or other final plans for the rest of the Center or buildings have been submitted. As mentioned, this shopping center is subject to the City's Design Standards for Large

Retail Establishments. The overall site layout, building footprints, parking areas, and access driveways provide the overall direction of the Center and were used by staff and the Planning Commission in the December 8, 2004 review to determine that this project complies with the Design Standards for Large Retail Establishments. As such, no further design, layout, or changes have been proposed.

The proposed project includes the construction of a new Wal-Mart Supercenter store with a building size of approximately 226,868 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road. The Wal-Mart Supercenter building is a single story structure. The architectural theme of the building is a contemporary style and uses construction materials commonly used in commercial shopping center construction. Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building. The major materials used for architectural treatment include fawn (brown) colored stucco, fawn (brown) cultured stone veneer, split face (light brown) block, sea-green colored smooth finish metal panels, charcoal roofing material, hallow (gunmetal gray) metal doors and cornices, and black fencing. The body of the building will be in shades of brown. The ground level will have fawn (brown) colored stucco walls with fawn colored stone veneer accent walls near key entrances and along the lower eight feet of the exterior wall. The architectural treatment features are mostly used on the north and east elevation. Also on the main entrance, a canopy type architectural feature is proposed. The proposed main entry canopy will be clad with a brown cultured stone finish.

The west and south elevations do not feature the same detailed architectural treatment. The west (rear) elevation is a continuous wall with little architectural treatment to breakup the elevation of the building. The entire west elevation will have fawn (brown) colored stucco walls with metal doors painted to match the stucco. Cornices and accent trims are provided to break up the wall elevation. The ground level will also have cultured veneer stone elements. The midsection of the western elevation should receive further architectural treatment to add architectural interest to the wall. It is important to note that this elevation will be visible from across Westgate Drive.

The southern elevation will feature nearly identical architectural treatment as the west elevation. However, the proposed southern elevation is less of an issue. First, there will be an 8-foot tall masonry wall on the southern property line to block any view of this elevation from the project to the south. Second, unlike the western elevation, the southern elevation is not a continuous large mass elevation. Because the main axis of the building faces west (the longest elevation), the south elevation is the side of the building and is relatively small in size in comparison. A condition of approval is included in the SPARC Resolution regarding additional architectural treatment for the west elevation.

Circulation and Parking

The site plan indicates six access points to three public streets. There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (Highway 12), and two from Westgate Drive. All three streets will have a raised center median that will restrict turning movements in some degree. The main entrance to the project parking lot is from Lower Sacramento Road and will be located near the middle of the project site. This entrance will have a traffic signal to control traffic flow and will allow both entering and exiting traffic to turn in both directions. The other access points from Lower Sacramento Road will be restricted to right turn-in and right turn-out movements. The direct driveway entrance from Kettleman Lane (Highway 12) will only permit a right turn-in and right turn-out traffic movement. Traffic can also access the shopping center from Kettleman Lane by way of Westgate Drive. This intersection is controlled by an existing traffic signal that will allow both right- and left-turning movements. The main (northern) access point from Westgate Drive will allow both right- and left-hand turning movements. The southern access point will only allow right-in, right-out movements. Circulation to and from the site is very similar to the Vintners Square Center (Lowe's) to the north.

The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed (4.45 per 1,000 square feet of building). A total of 434 parking spaces are required, per City code (General Retail 1 per 500). The proposed number of parking stalls exceeds the minimum parking requirements.

There are 12 cart corrals proposed to be distributed throughout the parking lot. These cart corrals will be screened in brown Concrete Masonry Unit (CMU) wall with wooden frames to provide additional ornamentation.

Landscaping and Signage

The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping of the building. Signage applications and approvals would be done separately, should the project be approved.

CONCLUSION: Staff believes that the discretion the City Council has is fairly limited as it relates to the project requests. The Use Permit, Tentative Map and Site Plan and Architectural review are all consistent with City Ordinances, Policy and past practice. The area of broader discretion is with the CEQA findings and statements of overriding considerations, and staff recommends approval of the Project.

FISCAL IMPACT: None

FUNDING AVAILABLE: None


Konradt Bartlam
Community Development Director

Attachments: Draft Resolution
Sheppard Mullin Richter & Hampton/ Remy Thomas Moose & Manley Appeal dated April 10,2009
Herum Crabtree Appeal dated April 15,2009
PAQ, Inc. Appeal dated April 17,2009
Planning Commission Resolution from April 8,2009
Draft Planning Commission Minutes from April 8, 2009
Planning Commission Staff Reportfrom April 8, 2009

CITY COUNCIL RESOLUTION

RESOLUTION NO. 2009-58

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING USE PERMIT FILE NO. U-02-12 TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER; APPROVING THE TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER; AND PROVIDING THE ARCHITECTURAL APPROVAL OF A NEW COMMERCIAL BUILDING TO BE CONSTRUCTED AT 2640 WEST KETTLEMAN LANE (WAL-MART), AND MAKING FINDINGS AND STATEMENTS OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 and portion of 058-030-09; and

WHEREAS, the application is for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages, a Vesting Tentative Map to create 12 parcels for the project, and architectural approval of a new commercial building including elevations and colors to be used for the construction of a Wal-Mart store located at 2640 W. Kettleman Lane (the "Project"); and

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice, held a public hearing before said Commission on April 8, 2009; and

WHEREAS, the Planning Commission voted 3-3 on a motion to approve the requests and make the findings, which resulted in a denial of the Project approvals; and

WHEREAS, the Project is consistent with all elements of the General Plan, **and** in particular, the following General Plan Goals and Policies:

- A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."
- B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."
- C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."
- D. Housing Element, Goal C, "To ensure the provision of adequate public facilities and services to support existing and future residential development".
- E. Circulation Element, Goal G, "To encourage a reduction in regional vehicle miles traveled."

- F. Circulation Element, Goal A, Policy 1, "The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility."
- G. Noise Element, Goal A, "To ensure that City residents are protected from excessive noise."
- H. Conservation Element, Goal C, Policy 1, "The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices."
- I. Health and Safety Element, Goals A, **B**, C, and D, "To prevent loss of lives, injury and property damage due to flooding." To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake. To prevent loss of lives, injury, and property damage due to urban fires. To prevent crime and promote the personal security of Lodi residents.
- J. Urban Design and Cultural resources, Goal C, "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, these findings, as well as the findings made within City Council Resolution No. 2009-27 certifying Final Revised Environmental Impact Report EIR-03-01, are supported by substantial evidence in the record of this proceeding and before this body; and

WHEREAS, approval of the requested architectural drawings will allow the construction of a commercial building that will comply with the City's Zoning Ordinance and Building Code regulations; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, the City of Lodi has invested over sixteen million dollars in its Downtown area to revitalize and create a specialty retail and commercial destination within the City; and

WHEREAS, the Lodi Shopping Center will create retail and commercial shopping opportunities outside of the Downtown area; and

WHEREAS, the City of Lodi is committed to revitalizing its Downtown area and is requiring that all new retail and commercial developments contribute to that effort; and

WHEREAS, the City of Lodi recognizes that the applicant will make an in kind contribution to the redevelopment of the Downtown area.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the Lodi City Council does hereby approve the Project subject to the following findings, conclusions, and conditions of approval:

California Environmental Quality Act ("CEQA")

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The City Council incorporates herein by reference City Council Resolution No. 09-27, dated March 11, 2009 certifying the Final Revised Environmental Impact Report ("EIR") for the Project and finds that the EIR, as revised, adequately identifies all significant environmental effects of the project pursuant to CEQA.
3. As provided by Public Resources Code section 21081, CEQA Guidelines sections 15091, 15092, and 15093, and other relevant provisions of CEQA, the City Council hereby makes and adopts those Findings of Fact and Statement of Overriding Considerations ("Findings") set forth in Exhibit A, attached hereto and incorporated herein by reference. The City Council, exercising its own independent judgment, determines that such Findings are supported by substantial evidence in the record including, but not limited to, the information and materials contained in the EIR, as revised, all notices and other documents related thereto, those documents and materials described in California Public Resources Code section 21167.6(e), and those documents and materials referenced in the Findings.
4. The City Council hereby approves and adopts each and every mitigation measure proposed in the EIR, as revised, (and as set forth in Exhibit A, attached hereto) and makes such mitigation measures a required component of and incorporated into approval of the Project. The City Council further finds that, except as to impacts found by the EIR to be significant and unavoidable, implementation of the mitigation measures identified and discussed in the EIR will avoid or lessen to a level of less than significant those environmental effects identified in the EIR for which a mitigation measure is identified.
5. Pursuant to Public Resources Code section 21081.6, the City Council hereby approves and adopts the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit B and incorporated herein by reference, which was prepared in conjunction with the EIR. The Mitigation Monitoring and Reporting Program is made a required component and condition of approval of the Project.
6. Because the adoption of all feasible mitigation measures will not substantially lessen or avoid all significant adverse environmental effects caused by the project, the City Council adopts a Statement of Overriding Considerations concerning the Project's unavoidable significant impacts to explain why the Project's benefits override and outweigh its unavoidable impacts on the environment as set forth in Exhibit A.
7. The City Council does hereby make its findings with respect to the significant effects on the environment resulting from the Project, as identified herein and in the hereinbefore mentioned EIR, with the stipulation that all information in the findings is intended as a summary of the full administrative record supporting the EIR, which full administrative

record is available for review through the Director of Community Development at his office in Lodi City Hall at 221 West Pine Street, Lodi, 95241.

8. Having reviewed and considered the Draft and Final EIR for the Project, as revised, and other relevant materials and information in the record, the City Council hereby approves the Project and makes the following specific findings relative thereto.

Use Permit and Tentative Map

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Said Tentative Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.
3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.
 - A. The approval of the Use Permit expires within 24 months from the date of this Resolution. Should any litigation be filed or continued regarding this project, the time limit shown shall be tolled during the pendency of the litigation. Final Parcel Map(s) conforming to this conditionally approved Tentative Parcel Map shall be filed with the Public Works Department in time so that the Public Works Department may approve said map before its expiration pursuant to City Council Resolution 2008-125, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the Final Parcel Map, as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. The Public Works Department shall notify the City Council of any such approvals. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refiling of the Tentative Map and new review processing of the map. Pursuant to Government Code section 66456.1, the applicant may seek multiple/phased final maps.
 - B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant and all property owners shall sign a notarized affidavit stating that "I (we), _____, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the City Council approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.
 - C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.
 - D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:

1. All buildings shall comply with the requirements of C-S zoning district and meet setback requirements from the right of way shown on the site plan. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
 2. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.
 3. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
 4. All drive-through eating facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
 5. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited. Developer shall install landscaping, curbing and other features to discourage removal of carts from the site. However, if such features prove ineffective, the Planning Director may require the installation of a cart wheel locking system.
 6. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
 7. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.
 8. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
 9. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
 10. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.
- E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced within 30 days following written notice from the Community Development Director.**

- F.** The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:
1. Project must receive and comply with all terms of the Cal Trans encroachment Permit necessary for access to Highway 12 directly from the Project and from Westgate Drive. Any conditions imposed by Cal Trans for the encroachment permit that result in site plan modifications shall be reviewed by City staff for consistency with Project approvals.
 2. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
 - a) Street right-of-way dedications on Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations resulting from Item #1 above. The dedications shall be to the approval of the Public Works Department.
 - b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the lane geometries resulting from Item #1 above and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
 - c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements.
 - d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
 - e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.
 3. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
 - a) **A** PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank which may be outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the

required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.

- b) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
 - c) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.
- 4. Provide a private access easement providing a clear path of travel for pedestrian traffic from the public right-of-way to all parcels within the boundaries of the map in conformance with ADA requirements.
 - 5. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.

Submit final map per City requirements including the following:

- a) Preliminary title report.
 - b) Standard note regarding requirements to be met at subsequent date.
- 6. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
- G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:
- 1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
 - a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide a detailed drainage master plan, including engineering calculations, for the entire area as well as all phases of the proposed project. The developer's engineer shall prepare and submit a work plan/scope for master plan preparation for approval by the City Engineer prior to start of

master plan work. Master plans need to be coordinated with the Southwest Gateway development. City staff will assist in the master planning process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.

- b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
- c) Grading, drainage and erosion control plan.
- d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
- e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
- f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
- g) Undergrounding of existing overhead utilities, excluding transmission lines.
- h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.
- i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the approval of the Public Works Department.
- j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
- k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package, including all the items listed above plus the Map/Improvement Plan Submittal cover letter, Improvement Plan Checklist and engineering plan check fees, is required to initiate the Public Works Department plan review process for the engineered improvement plans.

2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using approved flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, wastewater collection facilities shall be constructed to serve the project to the satisfaction of the Public Works Director.

3. Installation of all public utilities and street improvements in conformance with City of Lodi master plans and design standards and specifications, including, but not limited to, the following:
- a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems in Westgate Drive, Kettleman Lane and Lower Sacramento Road.
 - b) All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require a Caltrans encroachment permit. The Caltrans encroachment permit submittal package shall include a terminal access route application for STAA trucks. Additional right-of-way acquisition outside the limits of the map may be required. The City of Lodi will assist the developer in obtaining the additional right-of-way that may be required. Design and construction staking for the Kettleman Lane improvements will be performed by the City at the Developer's expense.
 - c) Street improvements in Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations resulting from Item #1 above and landscaped median, parkway and sidewalk improvements required by the City. Developer shall have no obligation to do any work on Westgate Drive west of the westernmost curb.
 - d) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to construct a driveway to the approval of the Public Works Director. Acquisition of additional right-of-way and construction easements from the adjacent property to the south (APN # 058-140-04) may be necessary to accomplish this work and shall be the responsibility of the developer.
 - e) The extension/installation of all public utilities, including, but not limited to, the extension/installation of master plan water, wastewater, storm drainage and recycled water mains to the south end of Westgate Drive, the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive and the installation of recycled water main in Lower Sacramento Road and Westgate Drive from Kettleman Lane to the south project boundary. The cost of extending or installing recycled water mains shall be eligible for reimbursement. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
 - f) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
 - g) Project design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP.
 - i) The City's adopted Stormwater Development Standards for new projects in conformance with the conditions of the City's Stormwater Discharge Permit. *The design of projects containing more than 5,000 square feet of impervious area, retail gasoline outlets and trash enclosures is significantly affected by these Standards.* The project shall be required to comply with the requirements of the Standards.

- ii) State-mandated construction site inspections to assure compliance with the City of Lodi Storm Discharge Permit are required. The fee for the inspections is the responsibility of the developer and must be paid prior to commencement of site grading and/or construction operations.
- iii) If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.

The City and Applicant shall enter into an improvement agreement for the installation of public improvements required as part of the Project prior to the development of the first parcel.

4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City's Public Works Department. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. In the event the Utility Master Plan referenced in paragraph 4(G)(1)(a) locates the permanent storm drainage basin in the same location as the temporary storm drainage basin, Project shall be entitled to reimbursement for its construction costs minus any cost to retrofit the temporary basin to serve as a permanent basin and meet public works permanent basin standards and specifications. Project's Stormwater Impact Fee shall be deferred pursuant to a Deferred Fee Payment Agreement as provided in Lodi Municipal Code Section 15.64.040 until such time as the reimbursement contingency set forth in this paragraph is resolved.
5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will not allow landscape and irrigation improvements within their right-of-way unless the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement; however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways.
6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40

7. All project design and construction shall be in compliance with the Americans with Disabilities Act (ADA). Project compliance with ADA standards is the developer's responsibility.

8. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
 - a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and " A shall extend to and include the installation of the westerly curb and gutter.
 - b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the south as shown on the site plan and construct a driveway to the satisfaction of the City's Public Works Department.
 - c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
 - d) Temporary storm drainage detention basin to serve the project.
9. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.
10. All property dedicated to the City of Lodi shall be free and clear of all liens and encumbrances and without cost to the City of Lodi and free and clear of environmental hazards, hazardous materials or hazardous waste. Developer shall prepare and submit a hazardous materials report and all property owners shall indemnify the City against any and all hazardous materials and/or ground water contamination existing on their individual property at the time of dedication for all property/easements dedicated to the City.
11. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.
12. The project shall provide for a prorated share of the on-going maintenance costs of median landscape improvements in Kettleman Lane, Lower Sacramento Road and Westgate Drive by annexation to the Lodi Consolidated Landscape and Maintenance District 2003-1 prior to acceptance of the public improvements. All costs associated with annexation to the District shall be the Developer's responsibility.
13. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
 - b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of building permit issuance.
 - c) Wastewater capacity impact fee at the time of building permit issuance.
 - d) County Facilities Fees at the time of building permit issuance.
 - e) Regional Transportation Impact Fee (RTIF) at the time of building permit issuance.

- f) The City is currently developing a Water Capacity Impact Fee to pay for the costs to construct a water treatment plant necessary to provide water to the Project. In lieu of paying the fee as ultimately adopted, Project has agreed to pay a current fee estimate of \$765,050 (1.43 times project Sewer Service Units (SSU's) times \$5,000) prior to the development of the first parcel. The purpose of paying a fee now is to obtain certainty of costs and the Project shall not be subject to future assessment or refund in the event the fee is ultimately higher or lower than the amount set forth above.
- g) Stormwater compliance inspection fee prior to commencement of site grading and/or construction operations.
- h) Reimbursement fees per existing agreements:
 - i. Reimbursement Agreement RA-02-02. The reimbursement fee for 2009 is \$40,469.03. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - ii. Resolution No. 2007-52 establishing an area of benefit and reimbursable costs for Lower Sacramento Road (Kettleman Lane to Harney Lane) improvements. The reimbursement fee for 2009 is \$90,042.73. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - iii. Reimbursement Agreement RA 08-01. The reimbursement fee for 2009 is \$222,498.63. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
- i) City Resolution 2006-234, adopted on December 20, 2006 amended the Electric Utility Department's Rules & Regulations 13, 15 and 16 and requires new development and this Project to pay the full cost of extending electric facilities to serve the Project.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

14. Obtain the following permits:

- a) San Joaquin County well/septic abandonment permit.
- b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

15. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:

- a) Master plan storm drain facilities and lines.
- b) Master plan water mains.
- c) Master plan reclaimed water mains.
- d) Industrial waste lines.

Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City.

- H. Install fire hydrants at locations approved by the Fire Marshal.
- I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.
- J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.
- K. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones, drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.
- L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.
- M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with "NO PARKING – LOADING ONLY" signs to the satisfaction of the Community Development Director.
- N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:
 - 1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
 - 2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
- O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.
- P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.
- Q. All construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday: No exterior construction activity is permitted on Sundays or legal holidays.
- R. Prior to the issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall ensure one of the following with respect to the existing Wal-Mart building located at 2350 West Kettleman Lane ("Building"):
 - a) The owner of the Building shall have entered into signed lease(s) with bona-fide tenant(s) for at least 50% of the Building square footage (not including the fenced, outdoor garden center). The signed lease(s) required hereunder shall include a lease(s) with a bona-fide retailer(s) or restaurant for a minimum of two-thirds of the Building frontage (not including the fenced, outdoor garden center); or

- b) The owner of the Building shall have entered into a fully executed purchase agreement for the Building with a bona-fide retailer; or
- c) The Applicant shall present to the City a cash escrow account, subject to the approval of the City Attorney, which account shall be for the purpose of securing applicant's obligation to demolish the Building not later than 90 days after the opening to the general public of the new Wal-Mart Supercenter (the "Opening Date"). The amount of the deposit shall be equal to the City estimated reasonable costs to demolish the Building (based on a licensed contractor estimate) plus \$100,000. The escrow account shall be paid to City in the event that Option (a), (b) or (c) is not satisfied within 90 days of the Opening Date. If Option (a), (b) or (c) is satisfied within 90 days after the Opening Date, the cash in the escrow account shall be refunded in full to the Applicant.

If the Applicant does not satisfy this condition under Option (a), (b) or (c) within 90 days after the Opening Date, the City shall use the funds to demolish the Building with any balance reverting to the City as compensation for its expense and inconvenience incurred to demolish the Building. The owner of the Building shall present evidence that any lender on the Building consents to the demolition in a form subject to the approval of the City Attorney. This condition shall be recorded against the property as a deed restriction, which runs with the land. Applicant and Wal-Mart agree to enter into any agreements that are necessary in order to implement this condition.

- S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.
- T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.
- U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.
- V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.
- W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. in the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.
- X. The project shall incorporate all mitigation measures as specified in the adopted Final Revised Environmental impact Report EIR-03-01 and attached CEQA findings for the project.
- Y. The submitted Use Permit, Tentative Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.

- Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.
- AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knox box system at each gate for Fire Department access.
- BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.
- CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.
- DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.
- EE. Developer shall pay for the linkage study that the City is required to do based on Program 11 of the recently adopted Housing Element of the General Plan. The developer shall receive a credit for the amount paid against the final fee as adopted by the City Council.
- FF. Wal-Mart shall provide proof of sale, to a non Wal-Mart related entity, of the existing Wal-Mart property located at 2350 W. Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of purchaser to lease or sell the existing Wal-Mart building.
- GG. Wal- Mart shall not allow overnight camping of any type (i. e. campers, recreational vehicles, tents) within the parking lot or site.
- HH. The developer shall invest in a building and/or capital improvements within the Downtown area, as defined by the Community Development Director, but no smaller than the area described in the June 1997 Downtown Development Standards and Guidelines plus the Pine Street Corridor extending to Washington. Investment shall be defined as supporting construction, rehabilitation, acquisition, tenant improvements and other improvements. The developer may make or support improvements to commercial buildings or property it owns or rents independently or in partnership with others, or to commercial property owned by others in partnership with owners and/or tenants. The downtown investment must be made no later than seven and a half (7.5) years from the issuance of final certificate of occupancy for the largest retail tenant. The total aggregate value of the capital improvements resulting from developer's investment must exceed \$700,000.

ARCHITECTURAL APPROVAL

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The submitted Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
3. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions:
 - a. All conditions set for the above shall apply to this approval.
 - b. The proposed building shall comply with all zoning and building code regulations.
 - c. The finished building shall be consistent with the plans approved by the City Council.

- d. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit. The final plans shall include the architectural features such as the approved colors, the building elevations including the cornice, trim caps, and curbed canopy, and other elements approved by the City Council. Any significant alteration to the building elevations as approved by the City Council shall require approval by the Planning Commission. Signage shall be individual letters.
- e. Further architectural treatment shall occur on the west elevation. Such treatment shall result in a visual break in the elevation.
- f. The proposed building must comply with all City Council requirements; as well as the requirements of the Community Development, the Public Works, the Electric Utility and the Fire Departments; and all other utility agencies.
- g. No variance from any City of Lodi adopted code, policy or specification is granted or implied by the approval of this resolution.
- h. The Developer shall pay for Electric Utility Department charges in accordance with the Electric Department's Rules and Regulations.
- i. The applicant shall submit load calculations and Electric drawings to Electric Utility as part of a building permit process. Load calculations and Electric drawings are needed for service equipment location, PUE requirements, and service sizing. Should the load calculations and Electric drawings require a change of site plan, the Planning Department shall forward the site plan to the Planning Commission for review and approval.
- j. This resolution does not constitute a complete plan check. Complete plan check shall be completed during building permit process.
- k. Wal-Mart shall employ the energy efficient measures proven effective, at the time of Plan Check submittal, by its High Efficiency (HE) program in the building design and construction. However, the measures used shall, at a minimum, be as energy efficient as those proven energy efficiency measures, or comparable measures, outlined more fully in the letter addressed to the City of Lodi from J. Kelly Collier, Senior Design Manager for Wal-Mart Real Estate and Design dated October 6, 2008 and presented to the Planning Commission at its October 8, 2008 meeting.

NOW, THEREFORE, **BE IT DETERMINED AND RESOLVED** by the City Council of the City of Lodi that Use Permit U-02-12, Vesting Tentative Map 03-P-001, and Site Plan and Architectural review relating to the Lodi Shopping Center project; State Clearinghouse No. 2003042113 is hereby approved, and the City Council hereby adopts the findings, statements of overriding considerations and other matters set forth in this resolution.

Dated: May 13, 2009

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I hereby certify that Resolution ~~No.~~ 2009-58 was passed and adopted by the City Council of the City of Lodi in a special meeting held May 13, 2009, by the following vote:

AYES: COUNCIL MEMBERS –Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

2009-58

**Exhibit A
(CEQA Findings)**

CITY OF LODI FINDINGS OF FACT AND STATEMENT OF
OVERRIDING CONSIDERATIONS PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
FOR THE LODI SHOPPING CENTER

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Under the California Environmental Quality Act, California Public Resources Code, sections 21000 et seq. ("CEQA"), for each significant environmental effect identified in an environmental impact report ("EIR") for a proposed project, the approving agency must issue a finding reaching one or more of three allowable conclusions in conjunction with approval of the project. The first allowable finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment. The second allowable finding is that those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by the other agency. The third allowable finding is that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or alternatives identified in the environmental impact report. (Cal. Pub. Res. Code § 21081; CEQA Guideline § 15091). CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or substantially reduce significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with some other agency (CEQA Guidelines, § 15091). Public Resources Code section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." CEQA Guidelines section 15364 adds another factor: "legal" considerations. (See also Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 565 (1990)).

In situations in which significant impacts are not at least "substantially mitigated," the agency, after adopting the findings, may approve the project if it adopts a statement of overriding considerations setting forth the reasons why the agency found that the project's benefits render acceptable its unavoidable adverse environmental effects (CEQA Guidelines §§ 15093, 15043). The California Supreme Court has stated that, "[t]he wisdom of approving...any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (Citizens of Goleta Valley, supra, 52 Cal. 3d at 576).

The Findings and Statement of Overriding Considerations set forth below ("Findings") provide the written analysis and conclusions of the City regarding the Project's environmental impacts, mitigation measures, alternatives to the Project, and the overriding considerations and presents an explanation to supply the logical step between the Finding and the facts in the record. (CEQA Guidelines § 15091.) To the extent that these Findings conclude that various proposed mitigation measures outlined in the EIR are feasible and have not been modified, superseded or withdrawn, the City hereby commits to implementing these measures. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect as part of the Project approval. The mitigation measures are referenced in the Mitigation Monitoring Program, adopted concurrently with these Findings, and will be effective through the process of constructing and implementing the project.

1. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. **Impact:** The project would convert approximately 40 acres of prime agricultural land to urban uses. While the severity of this impact can be reduced somewhat, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.
3. **Finding:** The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the loss of prime farmland resulting from the project, but it would not reduce the impact to a less-than-significant level. There are no feasible mitigation measures available that would avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact, therefore, remains significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the Draft REIR and Final REIR, there are no feasible alternatives or mitigation measures that would reduce the impact of loss of prime agricultural land resulting from the project to a less-than-significant level. The project's significant and unavoidable impacts to agricultural resources could be avoided by denying the project or lessened by requiring a substantially reduced project, which would prevent the conversion of all or a major portion of the site to urban uses. However, this action would not meet the fundamental objective of the applicant or the City of Lodi of developing the site for a commercial retail shopping plaza in conformance with the General Plan and zoning designations applicable to the site. In addition, denial of the project would not constitute a "feasible mitigation," and therefore would not be required under Section 15126.4 of the state CEQA Guidelines.

Although project-specific impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has minimized and substantially lessened the

significant effects of the proposed project on prime agricultural land through the requirement that an off-site agricultural conservation easement be acquired by the project applicant. The City has also generally minimized the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, agricultural preservation and protection is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for **loss** of farmland since it cannot itself replace land lost to development. The City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has attempted to reduce the impact for the loss of prime agricultural land at the project site through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenue for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will cause vital municipal infrastructure improvements to be implemented in the project vicinity, and development impact fees paid by the

applicant will help fund the project's proportionate share of contributions towards public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact:** Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)
2. **Mitigation:** Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact:** There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)
2. **Mitigation:** If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and these buildings will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. Implementation of the recommendations will be ensured by the Public Works Department and Building Division through their routine inspection and permitting functions. These facts support the City's findings.

C. STORMWATER BASIN BANK INSTABILITY

1. **Impact:** There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)
2. **Mitigation:** Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed along with the design-level improvement plans for the stormwater basin, and the Public Works Director will ensure that the basin is constructed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's findings.

D. SOIL CONSOLIDATION AND COLLAPSE

1. **Impact:** Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)
2. **Mitigation:** The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

E. EXPANSIVE SOILS

1. **Impact:** There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)
2. **Mitigation:** The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

F. SOIL CORROSIVITY

1. **Impact:** The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)
2. **Mitigation:** The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the City's approval specific buried utilities and foundation systems for buildings, and these features will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

1. **Impact:** During grading and construction, erosion of exposed soils and pollutants from equipment may result in water quality impacts to downstream water bodies. (Significant Impact)
2. **Mitigation:** A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. Typical measures required by the City of Lodi to be implemented during the grading and construction phase include the following:
 - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
 - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
 - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
 - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
 - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
 - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
 - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.
 - Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.
 - Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.
 - Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.
 - Collect construction waste daily and deposit in covered dumpsters.
 - After construction is completed, clean all drainage culverts of accumulated sediment and debris.

The project also is required to comply with NPDES permit requirements, file a Notice of Intent with the Regional Water Quality Control Board and prepare a Storm Water Pollution Prevention Plan.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The above mitigation measures are derived from Best Management Practices (BMPs) recommended by the Regional Water Quality Control Board, and are to be included in the Storm Water Pollution Prevention Plan (SWPPP) to be prepared and implemented by the project proponent in conformance with the state's General Permit for Discharges of Storm Water Associated with Construction Activity. In addition, the project grading plans will conform to the drainage and erosion control standards of the City of Lodi, and will be incorporated into the project Improvement Plans to be approved by the City. Implementation of the erosion control measures will be monitored and enforced by City grading inspectors. These facts support the City's finding.

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact:** The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)
2. **Mitigation:** The project shall include stormwater controls to reduce nonpoint source pollutant loads.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

In January 2003, the City adopted a Stormwater Management Plan (SMP) to implement the provisions of its Phase II NPDES stormwater permit issued by the State Water Resources Control Board. The SMP contains a comprehensive program for the reduction of surface water pollution. The project includes feasible structural BMPs (Best Management Practices) such as vegetated swales and a stormwater basin. Much of the stormwater runoff generated in the northern and southern portions of the site will be conveyed to vegetated swales or bioswales which will provide partial filtering of pollutants and sediments. This partially treated runoff, along with all other parking lot and roof runoff from the project will be conveyed to the 3.65-acre stormwater basin planned adjacent to the southwest corner of the site. The basin would serve as a settling pond where suspended sediments and urban pollutants would settle out prior to discharge of the collected stormwater into the City's storm drain system, thereby reducing potential surface water quality impacts to drainages and water bodies. The pump intake for the basin will be located two feet above the bottom to provide for accumulation of sediments which would be cleaned out on a regular basis.

Non-structural BMPs typically required by the City include the implementation of regular maintenance activities (e.g., damp sweeping of paved areas; inspection and cleaning of storm drain inlets; litter control) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Stormwater catch basins will be required to be stenciled to discourage illegal dumping. In the landscaped areas, chemicals and irrigation water will be required to be applied at rates specified by the project landscape architect to minimize potential for contaminated runoff. Additional BMPs, as identified from a set of model practices developed by the state, may be required as appropriate at the time of Improvement Plan approval. These facts support the City's finding.

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact:** The project would result in the loss of approximately **40** acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)
2. **Mitigation:** In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently \$6,165 per acre (2008). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently \$12,329 per acre (2008). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. The applicant's duty to mitigate the loss of agricultural land at a 1:1 ratio will further mitigate the loss of foraging habitat. These facts support the City's finding of less-than-significant after mitigation.

B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact:** The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that

may establish nests in trees along the project boundaries prior to construction. (Significant Impact)

2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:
 - If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
 - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. **As** specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

1. **Impact:** It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)
2. **Mitigation:** Implementation of the following measures will mitigate any potential impacts to cultural resources:
 - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
 - In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
 - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the detailed site reconnaissance by Basin Research Associates indicated that there is no evidence to suggest that cultural resources may be buried on site, the mitigation measure is a standard contingency that is applied in all but the least archaeologically sensitive areas. In the unlikely event artifacts are encountered during grading or excavation, the Public Works Director will enforce any required work stoppages, and the Community Development Director will contact the project archaeologist and will ensure that the archaeologist's recommendations are implemented. These facts support the City's finding.

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact:** The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road/ Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)
2. **Mitigation:** The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates calculated that with the above mitigation in place, the level of service at the affected intersection would rise to Level of Service C and thus meet the service standards of the City of Lodi. These facts support the City's finding.

B. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT SIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD FRONTAGE

1. **Impact:** During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95th Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)
2. **Mitigation:** Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

C. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT NORTHERN UNSIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD

1. **Impact:** The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)
2. **Mitigation:** The following mitigations shall be implemented:
 - a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
 - b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
 - c. Extend the southbound left-turn pocket by 100 feet;
 - d. Extend the taper from 60 feet to a City standard 120-foot taper;
 - e. Eliminate the northbound left-turn lane into the northern driveway.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact:** On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the potential for traffic conflicts arising from inadequate queuing capacity on Westgate Drive would be eliminated. These facts support the City's finding.

E. INADEQUATE LEFT-TURN LANE TAPER ON LOWER SACRAMENTO ROAD

1. **Impact:** On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper **is** proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

F. PUBLIC TRANSIT SERVICE

1. **Impact:** Development of the project would create a demand for increased public transit service above that which **is** currently provided or planned. (Significant Impact)
2. **Mitigation:** The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the additional demand for transit service generated by the project would not exceed the capacity of the transit system. These facts support the City's finding.

G. PUBLIC TRANSIT STOP

1. **Impact:** Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)
2. **Mitigation:** Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the transit service to the site would be adequate to meet ridership demand and would be provided in a manner which is convenient to transit riders, and which avoids traffic and circulation conflicts or congestion. These facts support the City's finding.

H. PEDESTRIAN FACILITIES

1. **Impact:** Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)
2. **Mitigation:** Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the pedestrian facilities provided in the project would be adequate to meet demand and provide for safe pedestrian movement throughout the project. These facts support the City's finding.

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

1. **Impact:** Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)

2. **Mitigation:** The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

Rooftop Mechanical Equipment. To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (L_{eq} -hour) for any residential yards.

Parking Lot Cleaning. To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The City of Lodi Building Official will require demonstration of compliance with noise specifications for rooftop mechanical equipment in conjunction with each individual building permit required for the project. The enforcement of the City Noise Regulations with respect to leaf blower noise will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact:** Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)
2. **Mitigation:** The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:
 - 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.
 - 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than significant level.

The City of Lodi Public Works Director will require demonstration of compliance with noise specifications for the basin pump in conjunction with the Improvement Plans for the project. The enforcement of the City Noise Regulations with respect to the hours of pump operation will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

C. CONSTRUCTION NOISE

1. **Impact:** Noise levels would be temporarily elevated during grading and construction. (Significant Impact)
2. **Mitigation:** Short-term construction noise impacts shall be reduced through implementation of the following measures:

Construction Scheduling. The applicant/contractor shall limit noise-generating construction activities to daytime, weekday, (non-holiday) hours of 7:00 a.m. to 6:00 p.m.

Construction Equipment Mufflers and Maintenance. The applicant/contractor shall properly muffle and maintain all construction equipment powered by internal combustion engines.

Idling Prohibitions. The applicant/contractor shall prohibit unnecessary idling of internal combustion engines.

Equipment Location and Shielding. The applicant/contractor shall locate all stationary noise-generating construction equipment such as air compressors as far as practicable from existing nearby residences. Acoustically shield such equipment as required to achieve continuous noise levels of 55 dBA or lower at the property line.

Quiet Equipment Selection. The applicant/contractor shall select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

Notification. The applicant/contractor shall notify neighbors located adjacent to, and across the major roadways from, the project site of the construction schedule in writing.

Noise Disturbance Coordinator. The applicant/contractor shall designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would notify the City, determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and would institute reasonable measures to correct the

problem. Applicant/contractor shall conspicuously post a telephone number for the disturbance coordinator at the construction site, and include it in the notice sent to neighboring property owners regarding construction schedule. All complaints and remedial actions shall be reported to the City of Lodi by the noise disturbance coordinator.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

1. **Impact:** Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)
2. **Mitigation:** Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District). (See Original Draft EIR, p.120).
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the dust control measures specified in the San Joaquin Valley Air Pollution Control District's Regulation VIII, as well as additional practices itemized in the FEIR and as otherwise required by the City of Lodi. The dust control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. The Public Works Department will monitor and enforce the dust

suppression requirements as part of their site inspection duties. Violations of the requirements of Regulation VIII are also subject to enforcement action by the Air District. Violations are indicated by the generation of visible dust clouds and/or generation of complaints. These facts support the City's finding.

B. REGIONAL AIR QUALITY

1. **Impact:** Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)
2. **Mitigation:** Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts to less-than-significant levels. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund its pro-rata share of public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

C. RESTAURANT ODORS

1. **Impact:** The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)
2. **Mitigation:** All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

1. **Impact:** The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over **40** acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least **40** acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.
3. **Finding:** It is the City's current practice to require development projects to acquire off-site conservation easements to off-set the loss of prime farmland. The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the cumulative loss of prime farmland resulting from development

projects, but it would not reduce the impact to a less-than-significant level. As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. Facts in Support of Finding: The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the Draft REIR and Final REIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through requirements that an off-site agricultural conservation easement be acquired by project applicants. The City has also generally minimized the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, agricultural preservation and protection are primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself replace land lost to development. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has applied feasible mitigation measures for loss of prime agricultural land at the cumulative project sites through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will cause vital municipal infrastructure improvements to be implemented in the project vicinity, and development impact fees paid by the applicant will help fund the project's proportionate share of contributions towards public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with the City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

B. REGIONAL AIR QUALITY IMPACTS

1. **Impact:** Emissions from project-generated traffic, combined with the emissions of other foreseeable projects in the area, would result in air pollutant emissions affecting the entire air basin. (Significant Cumulative Impact)
2. **Mitigation:** For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by environmental consultant, Donald Ballanti, concluded that the project would far exceed the significance thresholds established for these pollutants. In addition, large

commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts resulting from the proposed project to less-than-significant levels. Other foreseeable projects in the area may be more suitable for the implementation of TDM measures to reduce emissions on an individual project basis; however, the cumulative impact would not be reduced to a less-than-significant level. These facts support the City's finding.

- 5. Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund its pro-rata share of public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

IMPACTS ANALYZED IN THE REIR FOUND TO BE LESS THAN SIGNIFICANT.

CEQA does not require that findings be made on impacts found to be less-than-significant (See CEQA Guideline § 15091 (requiring findings on impacts found to be significant)). Nonetheless, set forth below is a summary of the City's conclusions on new items analyzed in the REIR for which impacts were found to be *less-than-significant*.

I. LAND USE AND PLANNING – SOCIOECONOMIC/URBAN DECAY IMPACTS

Urban decay is the product of an economic chain reaction that results in the closures of retail businesses as a result of a project, such as a shopping center, which in turn leads to physical deterioration of the surrounding neighborhood and businesses. (See Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal. App. 4th 1184 (2004)). An EIR need only disclose and analyze the direct and reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (Guidelines, §§ 15126.2, 15064(d)(3)). An impact "which is speculative or unlikely to occur is not reasonably foreseeable." (CEQA Guidelines, § 15064(d)(3)). Mere economic and social impacts of proposed projects are outside CEQA's purview. However, when there is evidence that economic and social effects caused by a project, such as a shopping center, could result in a reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the CEQA lead agency is obligated to assess this

indirect environmental impact. (See Anderson First Coalition v. City of Anderson, 130 Cal. App. 4th 1137 (2005)). As summarized below, urban decay impacts of the Project are found to be *less-than-significant*.

A. POTENTIAL FOR URBAN DECAY DUE TO SOCIOECONOMIC IMPACTS

1. Impact: The Project would include new retailers who would compete with existing retailers in the City of Lodi; however, there is insufficient evidence to suggest that this increased competition would result in business closures, and consequently would not indirectly result in substantial physical deterioration of properties, or urban decay (Less-than-Significant Impact).
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the economic effects of the project on local supermarkets general merchandise outlets, and businesses in Downtown Lodi. As explained further in the REIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. While there may be some decline in sales of competing supermarkets, supermarket store closures are not reasonably foreseeable. Sales are expected to decline for general merchandise stores such as Target and Kmart. The Kmart store is at risk of closure. However, the owners of the Kmart site indicate that they feel they could find new tenants should Kmart close and cease operation, thus minimizing the prospect of long term vacancies or total neglect leading to urban decay. Furthermore, the City Council has directed diligent code enforcement, which will assist in the prevention of urban decay. The City is entitled to rely on the effectiveness of its Code Enforcement program to prevent code violations. (See City Municipal Code Section 1.10.010 et seq.; Cal. Health and Safety Code Sections 17980-17992). Downtown Lodi has shifted its retail mix to specialty stores, entertainment, and restaurants which are less directly competitive with the proposed project and therefore not anticipated to realize urban decay because of the Project. With respect to the closure of the existing Wal-Mart store in conjunction with the project, conditions would be imposed on the project requiring, prior to the issuance of a building permit, either re-tenanting by a retailer, sale to a retailer, or demolition of the structure to minimize the possibility of urban decay resulting from its closure.

In summary, even if the project were to result in the failure of one or more existing competing businesses, any resulting vacancy would not necessarily lead to urban decay. Other contributing factors would need to occur to result in urban decay, such as the failure of surrounding businesses, combined with little or no effort on the part of property owners to maintain or improve their properties to a condition suitable for leasing. To reach a condition recognized as a physical impact under CEQA would require total neglect or abandonment of these

properties by their owners for an extended period such that substantial physical deterioration or urban decay would ensue. Such a conclusion is not reasonably foreseeable. Moreover, the City Council has directed staff to pursue diligent code enforcement, and such an urban decay impact is not supported by substantial evidence in the record. Accordingly, this impact is found to be *less-than-significant*.

B. POTENTIAL FOR URBAN DECAY DUE TO CUMULATIVE ECONOMIC EFFECTS OF COMPETING RETAIL PROJECTS

1. Impact: When the effects of the project are combined with those of the other approved, pending, or probable future retail project in the project trade area (e.g., Reynolds Ranch), there is a likelihood existing retail centers in Lodi would be subject to reduction in sales. Consequently, it is possible, but not reasonably foreseeable, that one or more business closures could result, and that the affected properties could be subject to long-term vacancies under cumulative conditions, but not total neglect or abandonment. Moreover, aggressive enforcement action by the City of Lodi under existing municipal code and state law provisions relating to nuisance abatement is expected to prevent conditions which would result in substantial physical deterioration of potentially affected properties. Therefore, no urban decay is expected to occur under cumulative conditions. (Less-than-Significant Cumulative Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the proposed Reynolds Ranch development and other existing retail within the City, including, the Target Center (which includes a Target and a Safeway), the Cherokee Retail Center (which includes a Kmart and OSH store), the Sunwest Plaza (which includes the existing Wal-Mart and a Food 4 Less Supermarket), Vineyard Shopping Center (which includes a Mervyns and Ace Hardware), Vintner's Square Center (which includes a Lowe's), retail at Lodi and Hutchins (which includes the former Albertsons, which is now an S-Mart, and a Rite Aid), Westgate Shopping Center (which includes a Raley's), Lakewood Mall (which includes local-serving tenants) the Lockeford Payless IGA/True Value Hardware, the Downtown Lodi retail, as well as retail outside the Lodi Shopping Center Trade Area. The REIR also considered the then planned Wal-Mart supercenters in Stockton (as well as the existing store in Stockton on Hammer Lane) and Galt. The Stockton and Galt stores are not expected to have a cumulative economic impact within the Trade Area defined for the proposed project because the Trade Areas are not expected to overlap to any great degree. This is especially true considering Stockton's Ordinance No. 018-07 C.S. (August 14, 2007).

While it is possible that the project, in combination with the Reynolds Ranch project, will result one or more business closures, it is not reasonably foreseeable that such closures would lead to total neglect or abandonment of the

business or urban decay. Should there be a business closure, the potential for physical deterioration will depend largely on the commitment of the property owner to maintain the property. Should the owner fail to maintain the property, City code enforcement staff would pursue active and aggressive enforcement as previously directed by City Council.

As discussed previously, Downtown has shifted to a specialty niche market, concentrated on entertainment and dining **as** well as unique, locally owned shops. Under cumulative conditions, the impacts to Downtown may include a reduction in sales and some additional limitation on Downtown's ability to expand its niche, particularly if Reynolds Ranch included boutique-style stores and restaurants. However, no closures of downtown business, including the downtown Long's Drugstore, are anticipated to occur under cumulative conditions with the assumed general tenant mix for the Reynolds Ranch project. Thus, in the absence of anticipated store closures, there is no potential for urban decay in the Downtown under cumulative conditions.

Accordingly and as further explained in the REIR, even assuming a reasonable worst-case scenario that results in one or more business closure, urban decay impacts of the Lodi Shopping Center, when combined with the economic effects of projects such as Reynolds Ranch, would result in a *less-than-significant cumulative urban decay impact*.

II. ENERGY

Appendix F to the CEQA Guidelines provides that an EIR should consider potentially significant energy implications. (See also Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.4(a)(1) (energy mitigation measures should be discussed when relevant)). As summarized below, energy impacts of the Project are found to be *less-than-significant*.

A. ENERGY CONSUMPTION

1. Impact: The project would increase energy consumption in the construction and operational phases of the project. However, energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The operation of the project would result in the consumption of about 162 billion BTU of electricity, natural gas, and transportation fuel per year. This **is** over 500 times more energy than the estimated 0.3 billion BTU in annual energy inputs that would be applied in an agricultural operation on the site. The energy consumed by the project operation would represent 1.9 percent of the total annual energy consumption in the City of Lodi of about 8,634 billion BTU, and about 0.002 percent of statewide energy consumption. However, there are a number of energy conservation measures beyond those required by Title 24 of the California Code of Regulations, which

will be incorporated into the design, construction, and operational aspects of the project, as discussed in the REIR, which would result in a considerable reduction in project energy consumption, particularly electricity. These measures include the use of skylights, energy-efficient HVAC units, solar-reflective roofing materials, energy-efficient lighting systems, and the reclamation of the “heat of rejection” from refrigeration equipment to generate hot water.

Fuel energy consumed during construction would be temporary and would not present a significant demand upon energy resources. Some incidental energy conservation would occur during construction through implementation of the noise mitigation measures identified in the Draft EIR such as fuel savings from the prohibition of unnecessary idling of vehicles and equipment. The incremental increase in the use of energy bound in construction materials would not substantially increase demand for energy compared to overall local and regional demand for construction materials.

The project demand for electricity would be approximately 4.42 gigawatt-hours per year during the operational phase; however, compared to the total electrical demand for the City of approximately 470 gigawatt-hours during 2005, the project would represent less than one percent of the total electrical demand in the City. The project demand for natural gas would be approximately 12.6 million cubic feet per year during the operational phase; however, compared with the total natural gas year demand for the City of approximately 3,892 million cubic feet during 2005, the project would represent about 0.3 percent of total gas demand.

The project would not result in a significant impact to energy resources since it would result in the consumption of relatively small amounts of energy, compared to statewide and local consumption rates, in both the construction and operational phases, and because the energy conservation measures incorporated into the design and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy.

B. IMPACT ON ENERGY SUPPLIES AND INFRASTRUCTURE

1. Impact: The increased demand for energy resulting from the project would not be substantial enough to require new or expanded sources of supply or the construction of new or expanded energy delivery systems or infrastructure capacity. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The energy requirements associated with the project would not exceed the energy supplies available to the project or exceed the ability of the various energy infrastructures to provide adequate supplies of energy to the project, during normal and peak demand periods, for the foreseeable future. As such, no new energy supplies would need to be developed to serve the project, and no system improvements would be needed to the energy delivery infrastructure to serve the project. Therefore, the impact

of the project upon energy supplies and energy delivery infrastructure would be less than significant.

ADDITIONAL CONSIDERATIONS

A. GLOBAL WARMING

The issue of global warming has been raised in the processing of the REIR. At the time the initial EIR was prepared and certified in 2005, no commenter raised the issue of climate change despite there being general awareness of the issue within the scientific and environmental communities. At that time, CEQA also did not require an analysis of global warming impacts. Assembly Bill 32 ("AB 32"), known as the California Global Warming Solutions Act, Cal. Health & Safety Code §§ 38500 et seq., was passed in September 2006 and became effective on January 1, 2007. AB 32 sets a statewide goal to decrease greenhouse gas emissions to 1990 levels by the year 2020, and it directs the California Air Resources Board to develop regulations on greenhouse gas emissions verification and monitoring. Senate Bill 97 ("SB 97"), enacting Public Resources Code section 21083.05, was passed in August of 2007, and became effective January 1, 2008. SB 97 directs the Governor's Office of Planning and Research to prepare, develop, and transmit to the Resources Agency guidelines for feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions, by July 1, 2009. It further directs that the Resources Agency certify or adopt those guidelines by January 1, 2010.

Both AB 32 and SB 97 were passed after the certification of the initial EIR, which occurred in February 2005. However, the issue of global warming is not a new concept, and it was known at the time the original EIR was certified in 2005. Comments concerning global warming impacts could have been, but were not, made on the initial EIR certified in 2005. Since no comments were made on the topic of global warming at the time the original EIR was circulated for public review, and because the Court did not order analysis of global warming impacts, the City is not required to analyze global warming impacts in this EIR. Additionally, AB 32 and SB 97 are not the type of new information contemplated by Public Resources Code section 21166 and CEQA Guidelines section 15162 that would require revisions to an EIR.

The City finds that it is not required to conduct an analysis of global warming in the FREIR, in part, because it is outside the scope of the FREIR prepared on remand and in response to the Superior Court's decision. Nonetheless, the City notes that evidence and materials submitted by the applicant indicate that global warming impacts would be less than significant in any event and speculative on a cumulative level of analysis.

B. WATER SUPPLY ASSESSMENT

By letter dated December 10, 2008, the Herum Crabtree law firm suggests that a water supply assessment is required for the Project pursuant to California Water Code sections 10910, 10912, 10911 and Public Resources Code section 21159.9. Because this issue could have been raised at the time the initial EIR was prepared and certified in 2005, but was not raised, the commenter is precluded from raising the issue now under the legal doctrine of *res judicata*, and the City is not required to analyze this issue at this time. Nonetheless, the City notes that this Project does not satisfy the criteria for requiring a water supply study under the applicable statutes. Water supply assessments are required for projects meeting the following criteria:

- (1) A proposed residential development of more than 500 dwelling units.
- (2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
- (3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
- (4) A proposed hotel or motel, or both, having more than 500 rooms.
- (5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
- (6) A mixed-use project that includes one or more of the projects specified in this subdivision.
- (7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(Cal. Water Code § 10912)

Based on evidence in the record, including evidence and testimony from the applicant concerning the size and nature of the Project, the City concludes that the proposed Project does not meet the square footage or water demand requirements set forth above. The project is an approximately 326,000 shopping center anticipated to employ less than 1,000 person. (See Sheppard Mullin letter of March 10, 2009). The City, therefore, concludes that it is not required to conduct a water supply assessment for the Project for the reasons that: (1) the issue was not raised during consideration of the EIR in 2005 and is now barred under the legal doctrine of *res judicata*; and (2) the Project does not meet the statutory criteria for requiring a water supply assessment.

FINDINGS CONCERNING ALTERNATIVES

Under CEQA, an EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the Final REIR are described below.

I. NO PROJECT ALTERNATIVE

- A. **Description of the Alternative:** The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.
- B. **Comparison to the Project:** The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable

impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.

- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the development impact fees paid by the applicant which would help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries, or the objective of meeting unmet retail demand from existing and future residents of Lodi. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City. For the reasons mentioned above, because the No Project alternative would not meet the project objectives, and because the No Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

II. REDUCED PROJECT SIZE ALTERNATIVE

- A. **Description of the Alternative:** This alternative would consist of a substantially reduced project site of approximately **24** acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of **40** acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.
- B. **Comparison to the Project:** The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the development impact fees paid by the applicant to help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's

ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City and for these reasons is not a feasible alternative. For the reasons mentioned above, because the Reduced Project alternative would not meet the project objectives, and because the Reduced Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

III. ALTERNATIVE PROJECT LOCATION

- A. **Description of the Alternative:** An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton Road, just east of I-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.
- B. **Comparison to the Project:** The impacts associated with development of the Flag City site would be somewhat greater than for the proposed project site. Although the impacts for many categories would be similar for both project locations, development of the Flag City site would result in negative effects in terms of land use policy, and the resulting potential for growth inducement, which would not occur with the proposed project site. Traffic impacts would be greater for the Flag City site, as would impacts to utilities and public services, although these impacts would be less than significant or could be fully mitigated. More importantly, the alternative project site would result in the same significant and unavoidable impacts to agricultural resources and air quality as are associated with the proposed project. Therefore, the alternative site would not lessen or avoid the significant and unavoidable impacts of the project.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The alternative project site is not environmentally superior to the proposed project site. In addition, due to its location outside the City of Lodi, the alternative site would not provide the benefits associated with the proposed project including increased municipal revenues and development impact fees for providing services, creation of employment opportunities for Lodi residents, meeting unmet retail demand from existing and future Lodi residents, construction of the project's proportionate share of vital municipal infrastructure improvements, and the opportunity to implement City goals and policies with respect to the commercial development of the project site (consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries), and the chance to provide a high quality development at the western gateway to the City. For the reasons listed above, this alternative is infeasible.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was

not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

CEQA Guidelines Section 15126.6(e)(2) requires that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected because it would not entirely fulfill the project objective of developing the proposed project site with a regional shopping center in conformance with the City of Lodi General Plan and zoning regulations, and because it would be substantially less effective than the proposed project in fulfilling the project objective of meeting unmet retail demand from existing and future residents of Lodi. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, and providing a pro-rata share of vital municipal infrastructure.

Additional alternatives recently suggested in a letter dated December 10, 2008 from the law firm of Herum Crabtree include: (1) a "Reynolds Ranch" alternative; (2) an "East Lodi/Redevelopment Area" alternative; (3) a "Proportionately Reduced Size" alternative; and (4) a "High Efficiency" alternative. As noted above, the EIR must identify a reasonable range of alternatives which would feasibly attain most of the Project's objectives and would avoid or substantially lessen any of the significant effects of the project. The lead agency need not consider every conceivable alternative, and it has discretion to determine how many alternatives constitute a reasonable range. The EIR's discussion and analysis of alternatives satisfies the requirement in its of analyzing a reasonable range of alternatives. The additionally proposed alternatives need not be considered at this time. Furthermore, it has not been demonstrated that these additionally proposed alternatives would meet most of the project objectives and also avoid or substantially lessen the environmental effects of the Project. Based on materials in the record, including a letter dated March 10, 2009 from the law firm of Sheppard Mullin, the Reynolds Ranch, East Lodi/Redevelopment Area and Proportionately Reduced Size alternatives appear infeasible. Components of the High Efficiency alternative are included as part of the Project conditions, and thus, it has not been shown that the High Efficiency alternative would most of the project objectives and also avoid or substantially lessen the environmental effects of the Project.

In conclusion, the City finds that there are no alternatives to the Project which could feasibly attain most of the basic objectives of the project and also avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

MITIGATION MONITORING PROGRAM

Attached hereto and incorporated and adopted herewith, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center project. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091-15093, the City Council of the City of Lodi hereby adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the project and the anticipated economic, social and other benefits of the project.

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts which are included in the record, the City Council has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. While mitigation measures have been identified which will reduce these impacts, they cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

B. Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project.

The City Council has considered the EIR, the public record of proceedings on the proposed project and other written materials presented to the City, as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Project Will Generate City Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.
2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center project.
3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower

Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward its pro-rata share of municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.

4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.
5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.
6. Project Features Numerous Energy Conserving Measures. The project proposes to include energy efficient and sustainable features as part of the project designs, including, for example, automated control system for heating/air conditioning, lighting controls, energy efficient lighting, and light colored roof materials to reflect heat.

In making the statement of overriding consideration in support of the findings of fact and this project, the City Council has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

Exhibit B
(Mitigation Monitoring and Reporting Program)

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

LODI SHOPPING CENTER

CITY OF LODI

APRIL 2009

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	B. AGRICULTURAL RESOURCES				
B1. Agricultural Land Conversion	B 1. The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1: 1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of occupancy permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS				
C1. <u>Seismic Ground Shaking</u>	C1. Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C2. <u>Seismic Settlement</u>	C2. If subsequent geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C3. <u>Stormwater Bank Stability</u>	C3. Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
c4. <u>Soil Consolidation and Collapse</u>	C4. The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		
C5. <u>Expansive Soils</u>	C5. The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.	Project Applicant with approval of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS (Cont'd)				
C6. <u>Soil Corrosivity</u>	C6. The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
	D. HYDROLOGY AND WATER QUALITY				
D3. <u>Erosion and Sedimentation</u>	D3. A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. (See EIR text for details.)	Project Applicant with approval by City of Lodi Public Works Director.	Throughout grading and construction of the project.		
D4. <u>Urban Non-Point Pollution</u>	D4. The project shall include stormwater controls to reduce nonpoint pollutant loads. (See EIR text for details.)	Project Applicant with final approval by City of Lodi Public Works Director.	Throughout construction and operation of project.		
	E. BIOLOGICAL RESOURCES				
E3. <u>Loss of Habitat for Special Status Animals</u>	E3. In accordance with the SJMSCP and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.	Project Applicant, in accordance with SJMSCP, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. <u>Disturbance to Burrowing Owls and Raptors</u>	<p>E4. The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:</p> <ul style="list-style-type: none"> • If ground disturbance is to occur during the breeding season (Feb. 1 to Aug. 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the Ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer. • If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) • If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. (Continued on next page.) 	Project Applicant, in consultation with CDFG, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. (Cont'd)	Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.				
	F. CULTURAL RESOURCES				
F1. <u>Disturbance to Buried Cultural Resources</u>	<p>F1. Implementation of the following measures will mitigate any potential impacts to cultural resources.</p> <ul style="list-style-type: none"> In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report. In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report. (Cont'd next page.) 	Project Applicant in consultation with a qualified archaeologist and/or qualified paleontologist, as applicable, with verification of mitigation by City of Lodi Community Development Director.	Throughout grading and construction of project.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	F. CULTURAL RESOURCES (Cont'd)				
F1. (Cont'd)	<ul style="list-style-type: none"> If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98. 				
	H. TRAFFIC AND CIRCULATION				
H2. <u>Future Plus Project Unsignalized Intersection Operations</u>	H2. The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Hamey Lane.	Project Applicant with approval by City of Lodi Public Works Director	Prior to issuance of occupancy permits.		
H4. <u>Cumulative Plus Project Access Conditions at the Signalized Access Drive Proposed Along the Lower Sacramento Road frontage</u>	H4. Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches except the westbound to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H5. <u>Cumulative Plus Project Access Conditions at Northern Unsignalized Access Drive Along Lower Sacramento Road</u>	H5. The following mitigation measures shall be implemented A) Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site; B) Construct a 100-foot southbound right-turn lane at the signalized project driveway; C) Extend the southbound left-turn pocket by 100 feet; D) Extend the taper from 60 feet to a City standard 120-foot taper; E) Eliminate the northbound left-turn lane into the northern project driveway (under Alternative B).	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H6. <u>Inadequate Left-turn Lane Taper on Westgate Drive</u>	H6. The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H7. <u>Inadequate Left-turn Lane Taper on Lower Sacramento Road</u>	H7. The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and extend the taper from 70 to a City standard 120-foot taper.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H8. <u>Public Transit Service</u>	H8. The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H9. <u>Public Transit Stop</u>	H9. Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop in the eastern portion of the project near Lower Sacramento Road.	Project Applicant, in consultation with City of Lodi Grapeline Service, and with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
H11. <u>Pedestrian Facilities</u>	H11. Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
	I. NOISE				
I3. <u>Noise from Project Activity</u>	<p>13. The following noise mitigation measures are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development</p> <p><u>Rooftop Mechanical Equipment.</u> To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (Leq-hour) for any residential yards.</p> <p><u>Parking Lot Cleaning.</u> To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of building permits.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	I. NOISE (Cont'd)				
14. <u>Noise from Stormwater Basin Pump</u>	<p>14. The following measures shall be implemented to mitigate potential noise generated by the stormwaterbasin pump:</p> <p>1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the noise levels generated by pump shall be specified to produce noise levels no greater than 45 dBA L_{eq} at the nearest residential property lines. The pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.</p> <p>2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from another imminent storm).</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
15. <u>Construction Noise</u>	<p>15. Short-term noise impacts shall be reduced through implementation of the following measures: limiting the hours of construction; proper muffling and maintenance of equipment; prohibition of unnecessary idling; noise shielding of stationary equipment and location of such equipment away from sensitive receptors; selection of quiet equipment; notification to neighbors of construction schedule, and designation of a 'noise disturbance coordinator' to respond to noise complaints. (See EIR text for details.)</p>	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi community Development Director.	Throughout grading and construction.		

EXHIBIT B

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	J. AIRQUALITY				
J1. <u>Construction Emissions</u>	J1. Dust control measures shall be implemented to reduce PM ₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Unified Air Pollution Control District. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Public Works Director and City of Lodi Community Development Director.	Throughout grading and construction.		
J3. <u>Regional Air Quality</u>	J3 Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions; however, these measures would not reduce the impact to a less-than-significant level.	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		
J6. <u>Restaurant</u>	J5. All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.	Project Applicant with approval of City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		

APPEAL LETTERS

Sheppard Mullin AND
Remy, Thomas, Moose & Manley
LLP 4/10/09

Herum/Crabtree 4/15/09

PAQ Inc. 4/17/09



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April 10, 2009

Our File Number: 15CM-130407

VIA E-MAIL AND FEDEX

Ms. Randi Johl, City Clerk
221 West Pine Street
Lodi, CA 95240

Re: Appeal of Planning Commission's decision to not approve the Lodi Shopping Center entitlements and to not adopt the Findings of Fact and Statement of Overriding Considerations (April 8, 2009 Planning Commission agenda item 2)

Dear Ms. Johl:

We submit this letter on behalf of our clients, Wal-Mart Stores, Inc. and Browman Development Company. We hereby appeal the Planning Commission's decision to: (1) not approve the Use Permit (U-02-12), Vesting Tentative Map (03-P-001), and Site Plan and Architectural Review (08-SP-08); and (2) not make and adopt the Findings of Fact and Statement of Overriding Considerations for the Lodi Shopping Center project ("Project") to the City Council.

The Planning Commission held a public hearing on April 8, 2009 to hear public testimony and to consider the Project entitlements (Use Permit, Vesting Tentative Map, and Site Plan and Architectural Review) and the Project Findings of Fact and Statement of Overriding Considerations. Alexis Pelosi and Darryl Browman presented testimony on behalf of Wal-Mart Stores, Inc. and Browman Development Company, respectively, in connection with the Planning Commission's decision. The Planning Commission motion to approve the Project Entitlements and to make and adopt the Findings of Fact and Statement of Overriding Considerations failed for lack of a majority vote and is therefore appealable per the City's code provisions and the State Subdivision Map Act.

City staff and its team of expert consultants have worked on this Project for at least seven years. We believe that the Project complies with all applicable City requirements for these entitlements and that the Findings of Fact and Statement of Overriding Considerations complies with the California Environmental Quality Act. Thus, we respectfully request that the City Clerk place this appeal on the City Council agenda in compliance with the City's appeal

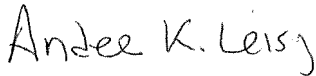
SHEPPARD MULLIN RICHTER & HAMPTON LLP

City Clerk
April 10, 2009
Page 2

procedures set forth in the City Zoning Code Chapter 17.88 and the State Subdivision Map Act.
(See Government Code section 66452.5(a).)

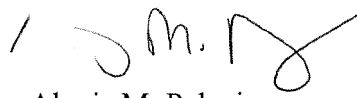
Thank you for your time and consideration of this matter. Please contact us if you need additional information.

Sincerely,



Andrea K. Leisy by Alexis M. Pelosi

for REMY, THOMAS, MOOSE &
MANLEY LLP



Alexis M. Pelosi

for SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

W02-WEST:5ENS1\401483434.2

cc: Rad Bartlam, City Community Development Director
Steve Schwabauer, City Attorney
Blair King, City Manager

BROWMAN DEVELOPMENT COMPANY, INC.



Development



Leasing



Management



Quality Retail Developments

BDC

1556 Parkside Drive, Walnut Creek, California 94596

Phone: (925) 588-2200 Fax: (925) 588-2230

Company Overview:

Browman Development Company, Inc. (BDC) is a commercial retail development company based in Walnut Creek, California that has undertaken multiple development projects throughout the western United States including the San Francisco Bay Area, Central Valley of California, Washington and Alaska. An active shopping center developer since 1989, BDC has withstood multiple real estate cycles by adapting to expanding and contracting real estate markets. BDC is not a merchant builder, It develops shopping centers for its own portfolio and manages them internally through its construction, leasing, legal and property management divisions. Since its inception, BDC has completed the development of over 40 neighborhood and regional shopping centers totaling 3,500,000 square feet.

Company Philosophy:

BDC's philosophy is to develop viable shopping centers for its long term portfolio by creating attractive retail environments that serve the needs of the communities in which they are built. BDC pursues this philosophy by seeking out quality tenants to fill voids in the marketplace, fostering a healthy tenant *mix*, and developing a welcoming environment for customers to enjoy on a recurring basis.



Project History

San Francisco Bay Area:

Alameda

- Marina Village Shopping Center (Outparcel)
- Webster Square

American Canyon

- American Canyon Marketplace

El Sobrante

- El Sobrante Center

Hayward

- City Center Gateway
- Mission Plaza Shopping Center
- Shops at Palmtag
- Skywest Commons
- Sueirro Plaza

Morgan Hill

- Morgan Hill Shopping Center

San Jose

- The Shops at Evergreen

San Pablo

- Richmond Parkway Plaza

Central Valley

Atwater

- Five Corner Crossings Phase I & II

Fresno

- Ashlan Plaza
- Cedar Marketplace
- Sunnyside Marketplace

Hanford

- Walgreens Pharmacy

Lodi

- Lodi Town Plaza
- Sunwest Plaza

Madera

- Walgreens Pharmacy

Orangevale

- Greenback Promenade

Riverbank

- Crossroads at Riverbank

Tulare

- Walgreens Pharmacy
- Tulare Marketplace

Visalia

- Walgreens Pharmacy

Sacramento Area

Davis

- Covell Plaza

Elk Grove

- Laguna 99 Marketplace

Sacramento

- Arden Place
- Bradshaw Marketplace

Northwestern California

Eureka

- Eureka Plaza

McKinleyville

- Mill Creek Marketplace

Alaska

Anchorage

- Tikahtnu Commons

Wasilla

- Cottonwood Creek Place

Washington State

Richland

- Vintner Square

Spokane

- Northwest Center
- Crestline Center
- Cascade Center
- Sullivan Shopping Center

Current Projects



Tikahtnu Commons Shopping Center (Anchorage, AK)

Tikahtnu Commons is an 85 acre regional shopping center serving the growing needs of Anchorage, Eagle River, and the Mat-Su Valley that commenced construction May 15, 2007. The shopping center is presently anchored by Target, Lowe's, and Kohl's; with Sports Authority, Best Buy, and Regal Cinemas opening in May 2009, June 2009, and March 2010 respectively.

The center also offers additional retail opportunities ranging from shop space to major anchor locations. By being conveniently located next to Glenn Highway, the project will serve as a gateway to Anchorage as it is located at the first Anchorage off-ramp from the rapidly growing Mat-Su Valley and Eagle River.



Cottonwood Creek Place (Wasilla, AK)

This Target anchored center is located at the high identity intersection of Glenn Parks Highway and Palmer Wasilla Highway. Its tenant *mix* provides a varied offering to serve the community, including Walgreens, Sports Authority, Famous Footwear, Wells Fargo, Taco Bell, GCI, AT&T, Regis, Sally Beauty, GameStop, and more. This center is home to Walgreens first store in the Alaska market and one of Target's first two stores in Alaska.

Featured Projects



Cochrane Commons Shopping Center (Morgan Hill, CA)

A 650,000 square foot regional retail project located within the affluent community of Morgan Hill anchored by Target, Petco, DSW, and Staples. Other key tenants include Chili's, Red Robin, Starbucks, Men's Wearhouse, Sleep Train, Massage Envy, Jamba Juice, See's Candies, Dickey's BBQ, and more.

This Art Deco architecturally themed project is conveniently located in north Morgan Hill to serve southeast San Jose, Gilroy, and of course, Morgan Hill.



Skywest Commons Retail Shopping Center (Hayward, CA)

Located on the site of a former movie theater, hotel, and gas station, this redevelopment project features a 140,850 square foot Target store, a 15,000 square foot Fresh & Easy Neighborhood Market, a 5,000 square foot junior major tenant, and 25,500 square feet of retail shops and restaurants including Payless Shoes, Pizza Hut, GameStop, Starbucks,

Jamba Juice, T-Mobile, and more. Skywest Commons' Tuscan themed architecture and site amenities have set a new design standard for Southern Alameda County retail projects.



Crossroads Regional Center at Riverbank (Riverbank, CA)

A 600,000 square foot regional retail project located on the border of northeast Modesto anchored by Target, Kohl's, Save Mart, and Home Depot, serving Riverbank, Oakdale, Escalon and northeast Modesto. This project, which opened in 2005, also includes Petco, Staples, Wells Fargo, The Men's Wearhouse, Famous Footwear, Justice for Girls, Red Robin,

Applebee's, and Round Table Pizza among the co-tenants. The project also includes 152 single family homes built adjacent to the center by Morrison Homes.

Featured Projects



American Canyon Marketplace (American Canyon, CA)

A 77,000 square foot neighborhood shopping center anchored by a Safeway Marketplace store and one of the first Safeway Fuel Centers to open in the region.

Jack in the Box, Starbucks, *UPS* Store, and Cold Stone Creamery are among the national shop tenants located

within this Napa Wine Country themed shopping center.



Sunwest Plaza Shopping Center (Lodi, CA)

Located in the growing Central Valley community of Lodi, this successful 250,000 square foot regional shopping center is anchored by Wal-Mart, JC Penney, and Food 4 Less.

The many shops and restaurants in the center include Applebee's, Hollywood Video, McDonald's, GNC, Strings

Italian Cafe, Sally Beauty Supply, and Radio Shack.



City Center Gateway (Hayward, CA)

City Center Gateway features three multi-tenant buildings containing 17,800 square feet of retail space located in the heart of Downtown Hayward. This exciting, pedestrian friendly project is anchored by Lucky grocery store and includes Starbucks Coffee, Jamba Juice, La Salsa Fresh

Mexican Grill, Panda Express, and Cold Stone Creamery as co-tenants.

Featured Projects



Lodi Towne Center (Lodi, CA)

Situated in Lodi's most dominant retail corridor, Lodi Towne Center features 170,000 square feet of retail space that is anchored by a recently remodeled Target store, Staples Office Supply, Big 5 Sporting Goods, and Payless Shoe Source.



The Shops at Evergreen Village (San Jose, CA)

Located in southeast San Jose's Evergreen neighborhood, The Shops at Evergreen Village feature a 15,000 square foot Walgreen's Drug Store and 6,000 square feet of retail and office space on two floors. The building's distinct European architecture creates a unique environment for patrons.



Tulare Marketplace (Tulare, CA)

Tulare Marketplace features one of the first Super Target stores to be built in California. This regional shopping center contains approximately 230,000 sf of retail and is strategically located in the path of growth at Prosperity and Mooney Blvd. Key co-tenancy for the project includes Tractor Supply Company, Valvoline, Starbucks, AT&T, Jeb's Blueberry Hill, FedEx, Kinko's, and Curves among others. It also offers two pads ideal for fast food and sit down restaurants.

RE

2009 APR 16 AM 10:14

CITY CLERK
CITY OF LODI

Brett S. Jolley
bjolley@herumcrabtree.com

April 15, 2009

Ms. Randi Johl, City Clerk
221 W. Pine Street
Lodi, CA 95240

Re: Lodi First Appeal to City Council re Lodi Shopping Center Project


Dear Randi:

Pursuant to Chapter 17.88 of the Lodi Municipal Code, please accept this letter as Lodi First's appeal of the Planning Commission's actions on April 8, 2008 regarding the Lodi Shopping Center Project ("Project"). Enclosed herewith please find a check in the amount of \$300 for the appeal fee.

This appeal is filed in an abundance of caution to preserve all claims and to exhaust all remedies regarding the Planning Commission's 3-3 tie-vote on a motion to approve the Project. Although staff declared the tie vote to be a denial, Lodi First appeals from the fact that the Commission did not make any affirmative denial of the Project - including affirmatively denying the findings of fact and statement of overriding considerations as set forth in CEQA Guidelines §§ 15091 and 15093 and that staff curtailed further Commission discussions regarding the Project or alternative motions once the motion to approve failed.

We request that the City Council set this appeal for hearing as required by the Lodi Municipal Code and that the hearing on this appeal be consolidated with any other hearings on timely filed appeals of the same decision. Should you have any questions, please feel free to contact me.

Very truly yours,


BRETT S. JOLLEY
Attorney-at-Law

Enclosure

cc: Client

Don Mooney, Counsel for Citizens for Open Government
Steve Schwabauer, City Attorney

Brett S. Jolley
bjolley@herumcrabtree.com

April 22, 2009

VIA E-MAIL

Ms. Randi Johl, City Clerk
221 W. Pine Street
Lodi, CA 95240

Re: Lodi First: Corrected Appeal to City Council re Lodi Shopping Center Project

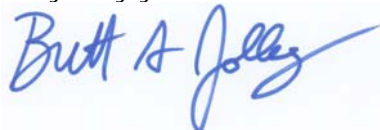
Dear Randi:

Please accept this letter as correction of Lodi First's April 15, 2009 letter appealing the Planning Commission's actions on April 8, 2009 regarding the Lodi Shopping Center Project. The \$300 appeal fee was paid by Check No. 19432, delivered to your office, along with the original appeal letter, on April 16, 2009.

I recently discovered that the original appeal letter contained a typographical error listing the date of the Planning Commission hearing as April 8, 2008 rather than April 8, 2009. Although your confirming e-mail acknowledged the appeal related to the April 8, 2009 hearing date (thank you), in order to ensure an accurate record, this letter formally corrects that typographical error and, to ensure no issues arise regarding timeliness of the correction, the correction is submitted within the appeal timeframe set forth in Lodi Municipal Code Section 17.88.060.A.1. All other information in the original appeal letter applies.

Should you have any questions, please feel free to contact me.

Very truly yours,



BRETT S. JOLLEY
Attorney-at-Law

cc: Client
Don Mooney, Counsel for Citizens for Open Government
Steve Schwabauer, City Attorney

RECEIVED

2009 APR

APR 17 5:

April 17, 2009

Lodi City Council
c/o City Clerk
221 W. Pine Street 2nd Floor
Lodi, CA 95240

Dear City Council:

Please accept this letter as an appeal by PAQ Inc. (doing business as Food 4 Less and Rancho San Miguel supermarkets) of the Planning Commission hearing on April 8, 2009 on the Lodi Shopping Center Project. Please find a check in the amount of \$300 as payment for the appeal fee. A representative of PAQ Inc. has attended and spoken against the project and EIR at all hearings on the project and EIR in 2008 and 2009.

The Planning Commission tied 3-3 on a motion to approve the project, but did not affirmatively deny the project. PAQ Inc. requests that the City Council affirmatively deny the application of Browman Development Company and Wal-Mart Stores Inc. to construct a Wal-Mart Supercenter at the proposed location for the following reasons:

- The project will severely impact and likely close several existing Lodi businesses, including our Food 4 Less store located at the southeast quadrant of Lower Sacramento Road and Kettleman Lane
- The project will create additional retail vacancies, decay, and blight throughout the city and prevent revitalization in East Lodi, and the project will stall or reverse downtown revitalization.
- The project will not create substantial taxes or jobs to support approving the project.
- The project will impact public services such as police, fire, and code enforcement; placing an improper financial burden on residents, taxpayers, and business owners.
- The project has the potential to displace hundreds of existing Lodi workers.

Sincerely,



Chris Podesto
Director of Marketing

4/8/09 PLANNING COMMISSION MEETING

Resolution

Transcript of meeting

Packet

RESOLUTION NO. P.C. 09-07

A RESOLUTION OF THE LODI PLANNING COMMISSION DENYING USE PERMIT FILE NO. U-02-12 TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND THE SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER; THE TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS; PROVIDING AND THE ARCHITECTURAL APPROVAL FOR A NEW COMMERCIAL BUILDING TO BE CONSTRUCTED AT 2640 W. KETTLEMAN LANE (WAL-MART)

=====

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 and portion of 058-030-09; and

WHEREAS, the application included the following requested approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages, a Vesting Tentative Map to create 12 parcels for the project, and architectural approval of a new commercial building including elevations and colors to be used for the construction of a Wal-Mart store located at 2640 W. Kettleman Lane (the "Project"); and

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice, held a public hearing before said Commission on April 8, 2009 to consider the Project; and

WHEREAS, the Planning Commission considered the information provided in the record and at the Public Hearing on April 8, 2009, including, but not limited to, the proposed conditions of Project approval and the proposed findings and statement of overriding considerations pursuant to the California Environmental Quality Act;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. A motion to approve the Project resulted in a tie (3-3) vote of the members of the Planning Commission, as indicated below, which results in a denial of the Project.

Dated: April 8, 2009

I hereby certify that Resolution No. P.C. 09-07 was passed and adopted by the Planning Commission of the City of Lodi at their meeting held on April 8, 2009, as a result of the following vote to approve the Project:

AYES: Commissioners: Cummins, Olson, Hennecke
NOES: Commissioners: Kiser, Kirsten, Heinitz
ABSENT: Commissioners: Mattheis

ATTEST:



Secretary, Planning Commission

0001

1 LODI PLANNING COMMISSION
2 PUBLIC HEARING
3 RE: REQUEST OF BROWMAN DEVELOPMENT COMPANY
4 AND WAL-MART REAL ESTATE BUSINESS TRUST
5 TO APPROVE USE PERMIT U-02-12 TO ALLOW THE CONSTRUCTION
6 OF A COMMERCIAL CENTER IN A C-S DISTRICT, AND ALLOW THE
7 SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER;
8 AND APPROVE VESTING TENTATIVE MAP 03-P-001 TO CREATE
9 12 PARCELS FOR THE PROJECT; AND SITE PLAN AND
10 ARCHITECTURAL APPROVAL OF A NEW RETAIL BUILDING TO BE
11 CONSTRUCTED AT 1600 WESTGATE DRIVE; TO CONSIDER
12 ADOPTING THE FINDINGS AND STATEMENTS OF OVERRIDING
13 CONSIDERATIONS PURSUANT TO THE CALIFORNIA
14 ENVIRONMENTAL QUALITY ACT
15

16 ~~~~~
17 Wednesday, April 8, 2009
18 at 6:04 p.m.
19

20 125 S. Hutchins Street
21 Charlene Powers Lange Theatre
22 Lodi, California
23 Mandy M. Medina, CSR No. 11649
24
25

0002

1 APPEARANCES
2
3 Planning Commission Members:
4 WENDEL KISER, CHAIRMAN
5 BILL CUMMINS, VICE CHAIRMAN
6 RANDALL HEINITZ, COMMISSIONER
7 DEBBIE OLSON, COMMISSIONER
8 DAVE KIRSTEN, COMMISSIONER
9 STEVE HENNECKE, COMMISSIONER
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0003

1 PUBLIC HEARING
2 April 8, 2009
3
4 CHAIRMAN KISER: Call the meeting to order,
5 please. Would the Secretary please call roll?
6 MS. CHADWICK: Absolutely. Okay.
7 Commissioner Heinitz?
8 COMMISSIONER HEINITZ: Present.
9 MS. CHADWICK: Commissioner Hennecke?

10 COMMISSIONER HENNECKE: Here.
11 MS. CHADWICK: Commissioner Kirsten?
12 COMMISSIONER KIRSTEN: Here.
13 MS. CHADWICK: Commissioner Olson?
14 COMMISSIONER OLSON: Here.
15 MS. CHADWICK: Commissioner Mathias?
16 (No response.)
17 MS. CHADWICK: Vice Chair Cummins?
18 VICE CHAIRMAN CUMMINS: Here.
19 MS. CHADWICK: Chair Kiser?
20 CHAIRMAN KISER: Here.
21 Before we get started, I would like to kind of
22 set the ground rules so that everybody knows what is
23 going to be happening this evening. First of all, I
24 would like to welcome everybody to the meeting of the
25 Lodi Planning Commission. We have a large number of
0004
1 people here tonight. I understand that everyone is very
2 interested in our subject tonight. I want to start the
3 meeting by letting everybody know that, first, we will
4 keep to our agenda, which is available on the back
5 table. And that's this. Okay?
6 All right. Next thing I would like to say is,
7 if you want to speak, please fill out a speaker card
8 like this. Pass it up here, and I will give everybody
9 an opportunity to speak. Once recognized by me, you may
10 speak for up to three minutes. I'm going to give the
11 proponent and the opponent ten minutes each to do it,
12 then five minutes on the rebuttal. I will let you know
13 when you have about a minute left. Once I notify you,
14 you should start wrapping it up. When your three
15 minutes are up, I would ask you to conclude, and then
16 you must stop speaking.
17 Just as you have an opportunity to be heard
18 with respect, so, too, do others. There will be no
19 applause, no heckling, no personal attacks. And please
20 limit your comments to relevant facts or to a point of
21 view.
22 Additionally, as there are so many people here
23 to speak, please try not to repeat comments that already
24 have been made. If you agree with a previous speaker,
25 you may simply tell us so. Come up and say, I agree
0005
1 with what was said, and that would be fine.
2 We will first hear a staff report from
3 Mr. Bartlam. After he concludes, I will ask the
4 Commission if they have any questions. Once all
5 Planning Commissioners' questions are answered, I will
6 open to the public. First we will hear from the
7 applicant. I will take public comment in the order I
8 receive cards, and once all comments have been heard,
9 the public hearing will close. At this point, all
10 decisions will be between the Planning Commission.
11 Is there anyone who does not understand these
12 rules, or is there anyone who does not agree with the
13 following?
14 Thank you very much. Okay. Mr. Bartlam.
15 MR. BARTLAM: Thank you. Good evening,
16 Commissioners. We're here once again to present the
17 Lodi Shopping Center for your consideration. As the
18 Commission will recall, you reviewed these very same
19 requests this past October. At that time, the
20 Commission chose to not certify the final revised

21 Environmental Impact Report. As a result of that
22 action, you were not able to consider the other project
23 approvals that were before you.

24 Subsequent to the Commission's action, the
25 matter was appealed to the City Council. The City

0006

1 Council considered the appeal last month in this
2 theater, and after the public hearing, voted to certify
3 the final revised EIR. Therefore, the Commission is now
4 faced with the balance of the project requests before
5 you and as previously presented.

6 Specifically, the applicant is requesting
7 three actions: A use permit to allow the sale of
8 alcoholic beverages within the Wal-Mart Supercenter
9 building, an additional use permit which is essentially
10 a site plan review within the community shopping center
11 district; a tentative parcel map which will divide the
12 land into 12 lots; and the site plan and architectural
13 review required for the buildings within the C-S
14 designation. And specifically before you this evening
15 is the Wal-Mart building.

16 So just by way of background, as you all know,
17 the Commission first reviewed and approved this project
18 in December of 2004. That began a fairly long list, at
19 least from Lodi's perspective, of actions before the
20 Lodi Planning Commission and City Council. Most
21 recently, the Commission, as I mentioned, denied a
22 request to certify the final revised EIR in October.
23 And as I mentioned, the City Council certified that
24 document last month.

25 So, once again, just to orient everybody as to

0007

1 what the project is, it's the southwest corner of
2 Kettleman Lane and Lower Sacramento Road. The property
3 is designated commercial shopping center. Its general
4 plan is neighborhood community commercial, and has been
5 that way since the 1991 general plan.

6 As you can see on the aerial, it is
7 essentially the fourth of -- fourth leg of what is a
8 built-out retail intersection, and this would complete
9 all the commercial activity within this area of Lodi.

10 So, specifically, as I mentioned, there are a
11 variety of project approvals before you. The use permit
12 and the commercial shopping center zone is the process
13 by which the C-S designation gets a public review. It's
14 the exact same review that took place with the other
15 three legs of the intersection, the Lowe's center, the
16 other Wal-Mart center, the Target center all came before
17 a planning commission during their review process.

18 In particular, the Commission's review should
19 be focused towards the standards for large retail
20 establishments, which was adopted by the City in 2004,
21 and in fact were, for the most part, derived to deal
22 with this project, in particular, and projects like it
23 in the future.

24 The second use permit request is the sale of
25 alcoholic beverages. As the Commission is aware, the

0008

1 City requires a use permit and a public hearing whenever
2 alcoholic beverages are requested to be sold, whether
3 those are packaged for off-sale consumption or for
4 on-sale consumption like a restaurant, a bar, night
5 club, and so forth.

The shopping center site plan is not changed from December of 2004. Specifically a requirement of the City was to keep everything that was approved at that time the same as what is being proposed today. The tentative map before you is to subdivide the property into 12 parcels. The largest parcel is obviously for the Wal-Mart building. It's just over 18 acres. The smallest is just under a half an acre. All 12 buildings in the project will accompany their own parcel. In other words, each parcel will have a building on it.

As a typical shopping center, all the parking is reciprocal, and would be no reserved parking or identified parking for one use over the other. And that's an idea of what the map looks like.

The site plan and architectural review is relatively new for the Planning Commission's action. Typically, in the past, this action would have taken place by your site plan architectural review committee subsequent to all of the Planning Commission and City Council actions. A recent, a fairly recent,

modification to the city code requires the Planning Commission to do the site plan and architectural review whenever the project's entitlement to those approvals require a Planning Commission action. So before you is the site plan and architectural review. Just briefly, we're talking about the Wal-Mart building only, not the entire center. Those will come back in subsequent actions before you when they're ready to be constructed.

The Wal-Mart building is approximately 216,000 square feet. It's located in the southwestern portion of the site and would face towards Lower Sacramento Road much like the Lowe's shopping center to the north. There are three entrance and exits off of Lower Sacramento Road: One off of Kettleman Lane, which is State Highway 12, and two from Westgate Drive, which is the extension of the street to the west, or what would be in back of the Wal-Mart building.

The main parking lot is located east side of the Wal-Mart building itself. There are a variety of smaller parking magazines strewn throughout the site that are more convenient to the pad shops and smaller tenants. There are a total of 965 stalls proposed.

Their landscape plan calls for a variety of large shade trees, ground cover, shrubs and so forth. There are over 450 trees being proposed. The conceptual

plan indicates standards that meet the large retail standards that I mentioned previously approved in 2004.

In terms of the elevation -- and I apologize for the quality of the visual for the audience -- the building is obviously a very large building. The front of the building and the street side of the building are shown in the first two elevations; the rear of the building, the west elevation, being the third from the top, and then the south elevation which will face essentially a block wall on the site. A little better perspective of what that building looks like.

There is a variety of building materials proposed, including split face masonry, rock detail, stucco, cornice treatments, and so forth. The attempt -- the attempt, obviously, architecturally with this building is to break up the large masses into

smaller frameworks. Again, it is a large building, so I -- from a staff perspective, we believe they have done an incredible job in trying to humanize, if you will, or put a pedestrian scale to the building proposed.

This is a view -- as the previous elevations were really the front of the building that faces inward towards the parking lot, this is a view what would be from the entry off of Westgate Drive. It shows the auto related activities that are proposed for that north

elevation, which brings me to a conclusion.

Staff believes that, based on the City Council's action to certify the final revised EIR, the plans that have been submitted, policies, and the previous actions of the City, including this Planning Commission, that the Planning Commission should make the findings that are contained in your resolution, which would approve the two use permit requests, it would approve the vesting tentative map, and it would approve the site plan and architectural review.

And with that, I'll entertain any questions you might have.

CHAIRMAN KISER: Questions?

VICE CHAIRMAN CUMMINS: I just want to -- a point of clarification: So tonight we're not dealing with any issue relating to the EIR, because that's certified and that's past, correct?

MR. BARTLAM: Yes and no. The Council certified the EIR, so the contents of that environmental review, the mitigation measures that were proposed have all been adopted by the Council. Those are issues off the table for the Commission's action tonight. You are required, however, and contained in your resolution are a set of findings having to do with the Environmental Impact Report as well as statements of overriding

consideration for those impact areas that were not able to be mitigated.

And you will recall, there's really two issue areas: One is cumulative air quality, and the second being agricultural resources. Those are two areas of environmental impact for which mitigation cannot be proposed or implemented that lessens to a less than significant impact.

And so by the California Environmental Quality Act, the Commission is now faced with making a finding for each of those two issue areas of statement of overriding consideration. Essentially what you're being asked to find is that there are benefits to the project that outweigh the negative environmental impact that's associated with the project.

And so, yes, in the sense that the environmental document is certified. You don't have the ability to go in and ask for more environmental study, you don't have the ability to suggest other types of mitigation. The Council has dealt with that issue.

The only thing before you is whether you agree with the Council action. And simply put, if you agree, there are findings that are consistent with that action. If you disagree, then you just simply cannot find those findings, you can't agree and make those findings, and

your action tonight is simple. You have to say no.

VICE CHAIRMAN CUMMINS: So, really, we have five proposals. So the four you mentioned, plus we're going to be voting on a statement of overriding plans, or making a ruling on that as well?

MR. BARTLAM: That's right. In your resolution, as you have with every resolution that is before the Planning Commission, regardless of the action, there are a series of findings which are essentially the facts of the action. And with this set of requests, as is the case with other requests we've seen, you must make those findings in the affirmative. And so a piece of the findings in your resolution are the environmental findings. And, again, I'm not going to tell you you must do one thing or another. You can do with it as you wish. But you can't -- you can't modify the environmental document. Now, that's not to say that you can't -- you can't tweak the findings. You certainly can. If there's something that is written that staff has proposed as a finding that you may not agree with, but written a different way you might, you certainly are able to modify those findings to get them to a place where you can agree. But you are not obligated -- and I'll stress this -- you're not obligated to agree with the Council action. But should

you not agree, your action then must be to deny the request.

VICE CHAIRMAN CUMMINS: Okay.

CHAIRMAN KISER: Commissioner Olson.

COMMISSIONER OLSON: I have a quick clarifying question. And that is, will you -- will we be asked to take all of this in one action, or can we parse them in any way, the actions, or are you going to address each one separately and ask for a vote? I noticed the resolution is drafted so that it's all in one fell swoop.

MR. BARTLAM: We've given you one resolution for one action. The Commission could certainly split them if you wanted to vote on the use permits separate than the parcel map, that's separate than the site plan and architectural review. We would then just make sure you understand that the various findings that are specific to those requests, the use permit findings would go with the use permit action, the environmental findings would go with each one of the actions you might take separately.

COMMISSIONER OLSON: Thank you.

CHAIRMAN KISER: Commissioner Heinitz.

COMMISSIONER HEINITZ: Yes. Just to clarify what Commissioner Olson just said, it's actually set up

so we're going to have public opinion on each and every one of these at one time; is that correct? So we're not going to take them one at a time that they're going to speak on.

CHAIRMAN KISER: Right.

COMMISSIONER HEINITZ: So it would be better for us that we just wait and look at it all in one package together? If they're going to speak -- if everybody is going to speak on everything all at one time, they're not going to be separated per action --

CHAIRMAN KISER: Right. Right. Right. Yes.

COMMISSIONER HEINITZ: That's what I wanted to

13 know. Thank you.

14 CHAIRMAN KISER: Any other questions? Seeing
15 none, open it to the public.

16 Applicant come up and speak, please. State
17 your name and address for the record.

18 MR. BROWMAN: Mr. Chairman, members of the
19 Planning Commission, I want to thank you again for the
20 opportunity to be before you. I think it's an exciting
21 time. This is a project that's been going on --

22 CHAIRMAN KISER: Excuse me. Can you state
23 your name for the record, please?

24 MR. BROWMAN: I'm sorry. Darryl Browman, 1556
25 Parkside Drive, Walnut Creek, California. Sorry about

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1 that, Mr. Chairman.

2 Again, I just wanted to say that we're excited
3 to be before you. This is a project that we've been
4 working on for over eight years, and we are in agreement
5 with staff on the conditions of approval. You know, one
6 of the benefits that you get with a project that's gone
7 on for this duration is, and that has been this
8 controversial, is that you get a huge amount of public
9 debate and you get a huge amount of input. And I think
10 one of the benefits that comes from that is that the
11 ultimate project that's before you today is a
12 culmination of years and years of people's hard work and
13 effort and public debate and participation. And as
14 difficult as it's been on my company and, you know,
15 planning staff and the City and the Planning
16 Commissioners on multiple occasions, I think that at the
17 end of the day, you ultimately will probably have a
18 better project as a result of the amount of debate and
19 effort and work that people put in.

20 I also want to take a minute and thank staff,
21 because staff has worked extremely hard, and I think has
22 been instrumental in the project design. And that's
23 something that I'm extremely proud of, and that's one of
24 the things that's before you. This project, I think,
25 will become a statement, and it will become -- it will

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1 become the project that people look to for new projects
2 in the City in terms of quality and design and, you
3 know, architectural enhancements for retail developed in
4 the City.

5 A couple of things that I want to talk about
6 that really, I think, make a big difference in this
7 project is we have taken it to what's called a
8 contemporary craftsman, which we think goes very well
9 with the wine industry for the City of Lodi. We got
10 large -- we've got large slope tiled roofs, we've got
11 significant breaking up of the massing as Mr. Bartlam
12 indicated in the front. And that articulation does a
13 lot of important things, but one of the most important
14 is it creates a pedestrian scale to the buildings. It
15 reduces the mass. And we have incorporated a lot of
16 trellising in the parking lot to both bring down the
17 scale of the buildings, and we did introduce, you know,
18 decorative light sconces and things like that that will
19 appeal to both the pedestrian in a distant visual basis.

20 And, lastly, from an architectural standpoint,
21 the pad buildings that will surround that are not before
22 you today are intended to match the same architectural
23 theme that you see, but the scale of those buildings

24 will be smaller, again, bringing the scale and feel of
25 the project to a pedestrian level both from the street

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1 and as you go from the street back into the project.

2 And we also intend to incorporate a number of outdoor
3 seating plazas and outdoor spaces as a part of the
4 project as well.

5 The other thing that I wanted to just clarify
6 for a second, in our last meeting, there was some
7 concern, and I think a little bit of misunderstanding,
8 regarding what Wal-Mart was willing to do as a part of
9 the building. And I wanted to go on the record to say
10 that Wal-Mart is prepared to do, at minimum, those items
11 that were outlined in the letters that were given to the
12 Planning Commission from Kelly Collier (ph), dated
13 10/6/08. And a lot of those -- a lot of those energy
14 efficiency items are things that we wanted to go on
15 record to say that they would do that or better. And I
16 think Mr. Bartlam also included that as a condition.
17 But I just wanted to make sure that was clarified. And
18 I can take a couple of seconds and talk about some of
19 those things if the Commission thought that was
20 appropriate, or if they just wanted to refer back to the
21 letter.

22 CHAIRMAN KISER: You can talk about those.

23 MR. BROWMAN: Number one, the structural steel
24 is going to be predominantly recycled structural steel.
25 The concrete floor slab will have fly ash and furnace

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1 slag which can reduce the amount of concrete by up to
2 40 percent. That would be put in the building. The
3 interior slabs will have an integral color rather than
4 the typical flooring and carpets for VCT and carpet.

5 We're talking about the introduction of about
6 250 skylights, with each of the skylights containing
7 daylight -- I'm sorry -- daylight sensing and dimming
8 ballasts which will be another significantly energy
9 efficient feature.

10 There will be a central energy monitoring
11 system that will be covered by the home office that can
12 allow the store to deal specifically with the climatic
13 issues in Lodi, the particular location of the store.
14 We intend -- the store intends to use high efficiency
15 RTUs which will save between 14 and 70 percent -- I'm
16 sorry -- 14 and 17 percent of additional energy. We
17 intend to use T8 fluorescent light fixtures in the
18 store. We also intend to use sensory activated high
19 efficiency low-flow toilets and faucets and urinals in
20 the project as well, which also saves significantly in
21 water. And the building signage is intended to be
22 internally illuminated LED instead of fluorescent.

23 And this has been to give you some examples of
24 the stuff that was highlighted in that letter. The only
25 other thing that I wanted to say is, you know, we think

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1 that this project has been highly scrutinized. We
2 appreciate the effort that everyone is putting into it
3 both at the Planning Commission and the City level and
4 at the public's level as well. We respectfully ask for
5 your approval of the project today. And I'm available
6 to answer any questions, and I thank you very much for
7 the chance.

8 CHAIRMAN KISER: Any questions? No questions

9 at this time. Thank you.

10 MR. BROWMAN: Thank you.

11 CHAIRMAN KISER: Opponent will get up and
12 speak.

13 MR. JOLLEY: Chair Kiser, I'm Brett Jolley,
14 2291 West March Lane, Suite B-100 in Stockton. I'm here
15 tonight on behalf of the Lodi First Group. And I
16 assumed that the proponents were done, so I stepped up
17 on behalf of the opponents.

18 Regarding this project, as Mr. Browman points
19 out, it has been a long time that this has been going
20 through the process. But we need to remember that time
21 doesn't necessarily heal all wounds, or in this case,
22 address all environmental and land use concerns with
23 this project.

24 Specifically, in looking at this proposal, I
25 see what I would call Costanza permitting. And if we

0021 1 think back to Seinfeld, one of my favorite characters
2 was George Costanza. And if you'll recall, George had a
3 famous adage about work. He said, when you're at work,
4 always walk around with papers in your hand so you look
5 busy and important. And in this case, we have heard
6 time and time again about all of the papers, all of the
7 studies and reports that have been put in, particularly
8 those that were recently produced by the applicants.
9 But like George's papers in his hand, these papers don't
10 necessarily go to answering the questions that you must
11 consider before approving this project. And,
12 specifically, that relates to this statement of
13 overriding considerations.

14 As we back up through this, we have to
15 remember that, although the Council certified the
16 Environmental Impact Report, as Mr. Bartlam has pointed
17 out, this commission still has a particular CEQA role in
18 making its decision. And in doing that, you have to
19 adopt findings required by CEQA guideline sections 15091
20 and 15093.

21 The 15091 findings require you to address the
22 significance and mitigation measures of impacts from the
23 project and to adopt a mitigation monitoring plan. The
24 15093 finding is the so-called statement of overriding
25 considerations, and that's where the focus of my

0022 1 discussion is. Specifically, the statement of
2 overriding considerations is required where the project
3 has significant and unavoidable effects as in the case
4 with this project. The Commission cannot approve the
5 project unless it makes that statement of overriding
6 considerations, finding that the benefits of the project
7 outweigh the environmental burdens.

8 In this case, your statement of overriding
9 considerations is found at page 34, Exhibit A of the
10 proposed resolution. And in that, the proposed
11 resolution contains six findings of overriding
12 consideration. They are tax generation, employment
13 creation, municipal infrastructure development, plan
14 implementation, high quality design, and energy saving
15 features.

16 I would submit to you that the latter four,
17 municipal infrastructure development, plan
18 implementation, design standards, and energy saving
19 features are project specific. They relate only to the

project, and do not necessarily confer any additional benefit on the City that would justify the project going forward. The real statements of overriding consideration are one and two, tax generation and employment creation.

The problem is the record is replete with

contradictory evidence on both of these items. Specifically, regarding evidence of tax generation increases in the City, we have a 2004 report submitted by the applicants and prepared by ADE, Applied Development Economics. And in that 2004 report, it indicated that there would be approximately a \$135,000 tax increase from this project.

In October of 2008, Wal-Mart said that the project would generate about \$790,000 in sales tax, and then noted that the current store generates about 600, leaving about a \$190,000 tax increase. At the same hearing, Mr. Browman said that the project would bring about a million dollars in sales tax revenue to the City.

In December, I submitted a report from Professor King, an economics professor from San Francisco State, who looked at the EIR's numbers and concluded there would likely be about a \$143,000 tax -- gross -- adjusted gross tax increase from this project, which he found was negligible when you consider other closed businesses and loss of other revenue in the City.

Then in March of this year, Wal-Mart, at the last City Council hearing, brought CBRE consultants from San Francisco who presented a report that night that found there would be a \$1.364 million tax benefit to the

City. So we raised the gamut from negligible to 1.364.

That is meaningful to your conclusion, if you so make it, that this project has benefits that outweigh its burdens. You need to know whether this is going to generate \$100,000 in additional tax revenue that might not even cover costs from the project, or whether it's going to generate 1.36 million.

You've got similar inconsistencies with jobs.

And point two on the statement of overriding consideration says that the project will increase jobs in Lodi. On October 2008, Browman said the project will generate 900 to 1,000 new jobs. In December, Browman reduced that number and said it will probably create 600 to 800 new jobs. In March of this year, Wal-Mart said the project would have about 866 jobs, 568 at the Supercenter and 298 at the other retail.

Again, you don't have a clear picture of what amount of jobs are being created, what types of jobs, and what type of employment revenues are going to come from this project. And that's relevant, because a 2007 case called Woodward Park versus City of Fresno explains, overriding considerations contrast with mitigation and feasibility findings. There are larger, more general reasons for approving the project such as the need to create jobs, providing housing, generate

taxes, and the like. This does not mean, however, that an agency's unsupported claim the project will confer general benefits is sufficient. The asserted overriding considerations must be supported by substantial evidence

in the final EIR or in the record.

You do not have that evidence in the record to support that conclusion. That evidence may well be out there, but you don't have it yet. And what I would encourage the Commission to do is to require that a fiscal impact analysis be done by the City, not by the developer, not by project opponents, not by Wal-Mart, giving the City an objective statement of what the true job and tax revenues will be from this project. Once you have that, you can determine whether or not to make your statement of overriding considerations. And until you have that, you're unable to make that statement.

MS. CHADWICK: That's eight minutes, so you have two minutes left. That's two minutes left.

MR. JOLLEY: Mr. Kiser, I apologize. Mr. Mooney representing Citizens for Open Government is here tonight. He had asked for four minutes, and I did not stop the clock. So if you could indulge him once you're done with me, I would appreciate that.

CHAIRMAN KISER: Okay. You got two minutes. Any questions before -- a question for you, Mr. Jolley.

COMMISSIONER KIRSTEN: Hi, Mr. Jolley. I have a question. You summarized the various analysis relative to the tax -- sales tax benefits that the City might realize. Just -- and I'm not sure that I understand. Are those figures, are they designed to describe the sales tax benefits at the outset, or is that an average over a period of years, or how is that analysis done?

MR. JOLLEY: It's not even that much information in most of the documents, Mr. Kirsten. What you have is one of the documents might say -- for example, the 2004 ADE report reaches a conclusion that there will be \$13.5 million in captured sales leakage that is new tax revenue in the City. The City gets one percent of that, or 135,000, if we assume that number is correct. The report doesn't even go that far to say it's going to generate \$135,000 in City sales tax revenue. That's the data that can be extrapolated from that. And that's the reason that I'm advocating the City get its own analysis of this done for the specific issue of what are the tax benefits from this project.

COMMISSIONER KIRSTEN: Would you say that each of these figures that are given in the various reports are independent of sales tax dollars that would be lost to other businesses based on competitive issues?

MR. JOLLEY: Yes. They do not account for -- based on my noneconomist reading of it, they do not account for lost revenue from other closed businesses or reduced income that might result from this project.

COMMISSIONER KIRSTEN: Okay. And then you also mentioned that you would propose that the Commission require an independent fiscal analysis based on not only the jobs, but also the sales tax. Have you seen examples of that? Is that a mainstream thing to do, or have you seen examples of that occurring?

MR. JOLLEY: Yeah. Yes. To answer your question, yes. Actually, several cities have recently adopted big box type ordinances. And, oftentimes, those will require special permitting for big box, however that ends up being defined. And one of the requirements

16 for permitting a big box is often the preparation of a
17 fiscal impact study that addresses the respective costs
18 and benefits in terms of a tax revenue from those big
19 box stores.

20 In terms of case law, there's only one case
21 out there that addresses fiscal impact studies. It's a
22 case called American Canyon from 2006. And in that
23 case, the City had prepared a fiscal impact study
24 analyzing the costs and benefits to the City coffers
25 from adopting a supercenter development project, and

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1 said that substituted for the need to conduct an urban
2 decay analysis. And the appellate court said, no, the
3 fiscal impact study may be relevant to the City
4 understanding the impacts to the City's coffers, but it
5 doesn't substitute for an urban decay analysis.

6 Here you almost have a flip-flop situation
7 where you have an urban decay analysis, but not a fiscal
8 impact study to address the impacts.

9 COMMISSIONER KIRSTEN: One last question
10 regarding the expected increases in employment and job
11 opportunities. Should we view that as a measure of the
12 buildout, the complete buildout, of the project, or is
13 the number of jobs that are expressed in that figure,
14 are they -- are they resulting from an expected buildout
15 over the years, and what might ultimately be produced in
16 terms of jobs in that project?

17 MR. JOLLEY: I think it would be relevant for
18 your analysis, in the analysis that the Commission
19 conducts, to look at that, job creation from the entire
20 project and over what time frame you would expect to see
21 that so you can understand. If you're only going to
22 create a gross of five new jobs when you compare it to
23 the existing facility, that should weigh in your
24 decision of whether or not the benefits of five new jobs
25 outweigh the impacts from this project. The numbers

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1 that are out there that I quoted you from the record, I
2 don't know exactly what those -- what those relate to,
3 because that detail is not included.

4 COMMISSIONER KIRSTEN: Would you guess that
5 it's likely that, say, for example, a Wal-Mart project
6 is built or is not built, whether that happens, there is
7 likely to be a shopping center or some similar use in
8 that corner, some of those jobs that are incorporated in
9 that figure would exist with or without the Wal-Mart,
10 correct?

11 MR. JOLLEY: Correct. Correct. So there's an
12 offset there that you have to account for.

13 COMMISSIONER KIRSTEN: Okay. I don't have any
14 other questions.

15 CHAIRMAN KISER: Any other questions? No
16 questions for you at this time, Mr. Jolley.

17 MR. JOLLEY: Thank you.

18 MR. MOONEY: Good evening. My name is Don
19 Mooney. I'm an attorney for Citizens for Open
20 Government. My address is 129 C Street, Suite 2, Davis,
21 California.

22 A couple of things. One, we did provide a
23 letter to the Commission this afternoon. And, again,
24 with these things, we don't get the -- apologize for
25 getting it to you on, you know, Wednesday afternoon, but

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1 when we receive the staff reports on Friday afternoon,
2 it takes us a little bit of time to go through it and
3 prepare a letter and get it to the Commission.

4 A couple of things I just wanted to touch on.
5 I agree with what Mr. Jolley had said. I also want to
6 focus on the fact that, in the resolution that you've
7 been asked to -- that's before you, one of the things in
8 the resolution on page three, I want to make sure the
9 Commission understands, it states that the Commission is
10 exercising its own independent judgment. And then some
11 of the things that you're being asked to find in the
12 resolution in the findings really seem to go against
13 what this Planning Commission -- actually, some of the
14 concerns that this Planning Commission raised back in
15 October with regards to the economic analysis, I'll even
16 say with regards to global warming, and some of the
17 other things -- the other issues that were of concern,
18 and the statement of overriding considerations, as
19 Mr. Jolley was stating.

20 So I wanted to make sure -- and I was glad
21 that there was a little bit of discussion from staff --
22 that you do have -- you're not simply bound -- you're
23 not required to simply approve this project with a
24 rubber stamp. And I think that that's kind of -- there
25 is another provision here in the staff report that says

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1 that the Commission has a little discretion with regards
2 to approval of this use permit. And I found that
3 troubling, because then, at the same time, you're
4 supposed to be exercising your own independent judgment
5 with regards to the CEQA findings.

6 And so I would like -- you know, and I
7 encourage the Commission to go back and think about
8 those issues that were of concern to it in October that
9 really haven't been addressed. And, in fact, on some of
10 the economic issues that hadn't been addressed, we all
11 know that the economic situation has only gotten worse
12 as time has gone by. And so, as Mr. Jolley said,
13 there's a lot of uncertainty there. And your decision
14 with regards to the statement of overriding
15 consideration is supposed to be based upon substantial
16 evidence within the record. And the Commission has
17 already expressed some concern about these issues. So I
18 encourage the Commission to take a hard look at it, and
19 prior to exercising your independent judgment, ask some
20 of those hard questions, but particularly of the
21 applicant and the staff in terms of the recommendations.

22 The other things of concern is that one of the
23 things in here is the -- we talked about in our letter
24 was the alternative analysis where staff has indicated
25 in the staff report that there is little discretion with

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1 regards to what could be approved. That makes the
2 alternative analysis within the EIR essentially a sham.
3 Because they're saying, this is the project you have to
4 approve, that you don't have the option of looking at
5 what those other alternatives are. And I would -- I
6 would argue that you, in fact, could adopt a no-project
7 alternative, and CEQA certainly allows for that. And
8 simply because the City Council had certified the EIR,
9 essentially, granted the appeal to certify the EIR, does
10 not -- does not bind the Council to adopt what
11 essentially was the preferred project in the EIR, or the

12 preferred alternative in the EIR. There are other
13 alternatives there that can be looked at and evaluated
14 and/or considered.

15 CHAIRMAN KISER: You have about two minutes.

16 MR. MOONEY: Thank you. You know, I really
17 don't have -- I really don't have anything else to add
18 in terms of what Mr. Jolley had said and what I had
19 said, so I'll just -- I will leave it at that, and
20 encourage -- again, I encourage the Commission to
21 exercise its own independent judgment with regards to
22 this, and not feel that they are bound by approving a
23 project simply because the City Council had certified
24 the EIR.

25 CHAIRMAN KISER: I think we have some

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1 questions for you. Commissioner?

2 COMMISSIONER KIRSTEN: Thank you, Mr. Mooney.
3 Just quickly, can you help me understand the -- you
4 mentioned that we have a no-project alternative. Can
5 you explain -- help me define that?

6 MR. MOONEY: Well, the no-project alternative
7 is under -- under the CEQA analysis. In the EIR, in the
8 final EIR, there was a range of alternatives on -- that
9 were evaluated. One was this project, one was a reduced
10 size project, one was the alternative location, and then
11 there's a required no-project alternative. And the
12 no-project alternative is oftentimes what you use to
13 evaluate kind of your baseline in terms of evaluating
14 your environmental impacts.

15 And in your consideration of your CEQA
16 findings, in terms of what project you want to adopt in
17 making your CEQA findings, do you have that discretion
18 to say, we're going to adopt the no-project alternative?

19 I acknowledge that, in essence, it would be a
20 denial of the application that's before you, but it
21 would be taking a look at the CEQA document. As
22 Mr. Jolley talked about the statement of overriding
23 considerations, in order for you to approve this
24 project, you have to make a statement of overriding
25 consideration, so -- and that statement of overriding

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1 consideration applies to the project the applicant has
2 put before you. So if you simply said, we're not
3 willing -- we don't think -- either the evidence does
4 not support the statement of overriding consideration,
5 or you don't think that the benefits as outlined in this
6 staff report in the resolution outweigh the -- outweigh
7 the costs or the impacts of the project, you're free to
8 simply say instead, we're going to -- we're going to
9 adopt the no-project alternative.

10 COMMISSIONER KIRSTEN: Well, then before we do
11 that, I would like to get the City staff and possibly
12 the City Attorney's opinion here. Thank you,
13 Mr. Mooney.

14 CHAIRMAN KISER: Any other questions for
15 Mr. Mooney? None at this time. Thank you.

16 MR. MOONEY: Thank you.

17 CHAIRMAN KISER: Okay. The next item on the
18 agenda is anyone who wanted to speak. If you want to
19 speak, please turn one of these cards in.

20 MR. BARTLAM: Mr. Chair, I believe you were
21 going to give opportunity for rebuttal.

22 CHAIRMAN KISER: Yes. Do you have rebuttal?

23 MS. PELOSI: Good evening, Chairman. My name
24 is Alexis Pelosi. I'm with Sheppard, Mullin, Richter &
25 Hampton. I'm land use counsel for Wal-Mart. In

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1 response to some of the questions, and I'll just be
2 brief, Darryl Browman wanted to have a few minutes. So
3 if you could just let me know when I have a little more
4 than a minute left.

5 CHAIRMAN KISER: You have five minutes for
6 rebuttal, so --

7 MS. PELOSI: Okay. Great. I don't think I'll
8 take all that time. With regard to the comments made by
9 the opponents, first, I wanted to be clear and on the
10 record that there is substantial evidence in the record
11 before you to make the CEQA findings and to adopt the
12 statement of overriding considerations.

13 What we have here is a conflict among experts.
14 There are experts that have been presented that state
15 that the economic benefit of the project is one thing,
16 then there are also statements by experts that say
17 another. That's the battle of the experts, and that is
18 what you have before you here tonight.

19 The Woodward Park case is not exactly on
20 point, because in that case, there was no evidence in
21 the record. Here we do have evidence in the record. We
22 have the BAE report, which actually did do a fiscal
23 impact analysis and it did look at sales tax. We also
24 have the CB Richard Ellis report, which we prepared in
25 direct response to the comments that we received from

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1 the Planning Commission when we were before you the last
2 time. And the point of the CB Richard Ellis is to go
3 over what the net tax gain or net tax revenue would be
4 to the City from this project. It looks at the gain of
5 sales tax, it takes away the loss of sales tax from the
6 closing of the existing Wal-Mart, the gain of
7 replacement tenants to that building, and then the loss
8 of sales tax from the diversion of the applicant based
9 on information in the BAE report and the EIR. It also
10 looked at property taxes and other sales tax revenues.

11 With regard to jobs, the existing Wal-Mart
12 employs approximately 300 people. It's been estimated
13 in a letter that was submitted to the City Council that
14 there will be approximately 866 -- or up to 866 new
15 employees at the Lodi Shopping Center. That would be a
16 net gain of 566 new jobs from not only the Wal-Mart, but
17 then also from the other --

18 COMMISSIONER HEINITZ: Is there feedback?

19 CHAIRMAN KISER: We're having a tough time.
20 We can't hear.

21 (A brief interruption.)

22 CHAIRMAN KISER: That's better.

23 MS. PELOSI: Is that better?

24 CHAIRMAN KISER: Yes.

25 MS. PELOSI: So, basically, that, in summary,

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1 you know, are the comments that we have with regard to
2 the statements that the opposing attorneys have said.

3 There is substantial evidence in the record
4 before you tonight. There is evidence that shows the
5 economic benefit of this project both in the EIR and in
6 the CB Richard Ellis report, which was submitted.

7 And with regard to current economic

conditions, before the City Council considered the EIR, BAE did prepare an update of current market conditions and the impact on their analysis. And that was considered in the EIR, and the City Council considered it before deciding to certify the EIR. So there has been additional information that has been given, that has been analyzed, that is in the record, this report, the findings, and the statement of overriding considerations.

CHAIRMAN KISER: They have some questions for you. I do.

MS. PELOSI: Sure.

CHAIRMAN KISER: I have been at the meetings, the last Council meeting and the one before that. I've been in all those meetings. I was there at this meeting and a gentleman got up from CB Richard Ellis, and those numbers were conflicting with, and the numbers have been all over the board. Can you explain that to me?

MS. PELOSI: Yes. And, again, you should have received today a letter from CB Richard Ellis. And, unfortunately, Elliott was not able to attend tonight, because it is a Jewish high holiday, and so he was not able to be here. And this basically goes over those questions that were raised. And the letter explains the difference in those numbers between the ADE report and the CB Richard Ellis report.

So in it you can see that BAE actually included a larger diversion in sales. So they assume that there would be 55 million in sales diverted. This is from the EIR. And ADE assumed a lower figure of 36.2 million.

There also, if you compare again, there's a disparity between the estimate of total sales for the project. ADE only estimated total sales of 111 million, while BAE estimated 163 million. And the reason why is it's a difference in assumptions. ADE assumed a Wal-Mart annual sales of \$350 per square foot, and BAE assumed an estimate of \$564 per square foot, which was based on more current information, including national sales data for all Wal-Mart stores, and the estimated sales per square foot of the existing Lodi store.

CHAIRMAN KISER: Now, the question I have is, this is 207. We're in 209. And your sales are down

from 207, aren't they, or are they up?

MS. PELOSI: Unfortunately, Aaron Rios from Wal-Mart would be the person to answer that question regarding existing sales. But I think if you follow the news reports, I think of all the retailers, Wal-Mart has continued to do very well in these tough economic times. Wal-Mart is one of the only large scale retailers who continues to show increase in profit and also an increase in their share price. So as a result, I don't think that that would be an accurate statement to assume that simply because the economy is down that the sales per square foot at the existing Lodi store is also down.

CHAIRMAN KISER: Thank you. I got a question for you here. Mr. Kirsten?

COMMISSIONER KIRSTEN: Ms. Pelosi, thank you for your comments.

MS. PELOSI: Yes.

COMMISSIONER KIRSTEN: I would just comment,

19 this letter dated today, April 8th, comes to us at the
20 11th hour. And in each of our previous meetings, we
21 received information just in the hours preceding the
22 meeting. It's important information. It's a little
23 hard to get our brain around this on such short notice.
24 So while there may be some valuable information in here,
25 and something that would be pertinent, I would just say

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1 that for the -- in my case, I would rather see this
2 information a little earlier so that I have a chance to
3 incorporate it into my thought process.

4 MS. PELOSI: I do apologize for that. There
5 was some scheduling issues and some people were out of
6 the country, and that's the reason why the report didn't
7 get to you until this afternoon. And I do apologize for
8 that.

9 COMMISSIONER KIRSTEN: Okay. I don't blame
10 you. I'm just saying that --

11 MS. PELOSI: No, I understand.

12 COMMISSIONER KIRSTEN: -- I'm speaking for
13 myself, it's pretty difficult to incorporate. It looks
14 like -- it looks like it contained some useful
15 information, but I didn't get it in time to really have
16 a chance to analyze it.

17 MS. PELOSI: And, again, I mean, the CB
18 Richard Ellis report which was prepared previously
19 actually is in the packet. It was in the agenda packet.
20 And this just specifically responds to the questions
21 that the City Council had raised.

22 COMMISSIONER KIRSTEN: Right. And we agree on
23 that.

24 MS. PELOSI: And I do apologize it came so
25 late.

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1 COMMISSIONER KIRSTEN: Okay. I agree. I'm
2 just referring to this April 8th letter.

3 CHAIRMAN KISER: I have a question for you.
4 This report was prepared January the 12th, 2009. The
5 Planning Commission never got that report until it was
6 brought to the Council. How come we never got it
7 before?

8 MS. PELOSI: And I just have to assume that
9 the report wasn't final and wasn't ready for
10 dissemination at that point.

11 CHAIRMAN KISER: It states right here it was
12 completed on January 12th of 2009. That's why I asked
13 the question.

14 MS. PELOSI: Yeah. And, again, I don't know
15 the answer to that question.

16 CHAIRMAN KISER: Okay. All right. Thank you.

17 MS. PELOSI: And then Darryl wanted to say a
18 few --

19 CHAIRMAN KISER: Yes. Can you state your name
20 and address for the record again?

21 MR. BROWMAN: Yeah. Darryl Browman again,
22 1556 Parkside. Thank you, Mr. Chairman and Members of
23 the Council. I just wanted to say a couple of things.
24 I think that there's -- as Alexis said, there's a
25 substantial amount of evidence before you that supports,

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1 you know, job creation, sales tax revenue increases.
2 But I think even more importantly, we have a Planning
3 Commission that has the ability to exercise its own

discretion and is an intelligent group of people. And I would ask not only to look at those reports, but to use some common sense. And I would point out a couple of things that I think are helpful.

Number one, one of the benefits that hasn't been, but I think should be if you -- if you do elect the report of the overriding considerations, is that the creation in the buildout of the four corners creates a powerhouse intersection that ensures for the City of Lodi successful retail for the foreseeable future, 30, 40, 50 years.

And I use -- let's talk specifically. Let's not use speculation. Let's use some real examples. And the best example I can give you is a community of 20,000 people in Riverbank, California. And each time we added larger and better retailers to that project, the sales of those tenants have increased substantially. And the base of what you have been able to obtain in terms of retail possibilities has expanded each time we've done that. And that's practical real examples that's less than an hour and a half from where we're talking about.

And what ends up happening is, by creating a

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broad -- a broader retail environment, you not only are able to increase the amount of people that come to shop in the location, but you're also able to increase the quality and the number of tenants that are potential tenants for the project. For example, you know, when we first started in Riverbank, if there wasn't a Target and a Home Depot, we never would have gotten Kohl's in a community of 20,000 people. But with a Target, with a Home Depot, we were able to attract that kind of a tenant. And then what happened after that was, with the Kohl's, we were able to get a grocery store to that location, because the volumes that were available there were actually expandable, and so --

CHAIRMAN KISER: Two minutes. Just to let you know.

MR. BROWMAN: Thank you. And so I think those are things that I think are certainly available for the Planning Commission to consider as part of this decision process.

And I would also say, you know, there was some concerns expressed about, you know, when do those jobs occur. And I think that's a legitimate question. And I think the answer is they're not all going to happen tomorrow. But what I can assure you is I have a history of 17 years with the City. And we're going to do it

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incrementally, so that we build when we have tenants that support what we're trying to do. Not just tenants, but the right tenants that will create a good, viable shopping center over the long-term.

So will that be in 12 months? No. It may be a three- or four-year buildout. But what I can do is I can point to a history in the City of doing just exactly that. We phased each one of our projects and built them out, and those tenants still exist today because we've not gone after the first available body that might not be the best retailer, but who is the best retailer that will complement what's going on at that intersection. We're committed to doing that exact same thing. So I would suggest, yeah, it's not going to happen tomorrow,

15 but we're all in this for the long-term. We've been
16 together for 17 years and, frankly, we'll probably be
17 together for another 20 or 25 or 30 years, at least in
18 my lifetime. And I can say that that's, I think, the
19 approach we ought to be taking. Let's make good
20 long-term decisions that get us where we want to go.

21 And the other thing, the discussion about the
22 no-project alternative, I think, misses the point. This
23 property has been zoned in general plan for I believe
24 it's 12 years. So if this project gets denied, that
25 doesn't mean the project will lay fallow forever. There

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1 would end up ultimately being another commercial
2 property here which, theoretically, could have the exact
3 same impacts.

4 And so I think that the real answer is I would
5 ask the Council to take a look at some of these
6 benefits. I think that they're real and they're
7 measurable. And I would ask the Council to use their
8 discretion. I have faith in your ability to make
9 quality decisions. And I thank you very much for your
10 time, and I'm available to answer any questions.

11 CHAIRMAN KISER: Commissioner Heinitz.

12 COMMISSIONER HEINITZ: Yes, Mr. Browman.

13 Thank you. Since you opened it up, I'll continue on.
14 The dynamic four corners. Great idea. It's dynamic as
15 it sits now. Tell me, what will you do with your
16 dynamic four corners once the Wal-Mart goes across the
17 street and you have an empty Wal-Mart existing building,
18 and it affects Food-4-Less, which possibly could be
19 affected, and it affects Safeway, which could be
20 affected? What happens to your dynamic four corners at
21 that time?

22 MR. BROWMAN: Actually, I look forward to that
23 challenge. I have an occupancy rate that's in the high
24 98, 99 percent. And I'm committed to getting the space
25 leased. I purchased the building. That was one of the

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1 big concerns that people had said early on, that it was
2 going to get restricted. We worked with the City and
3 made sure there were no restrictions on the building.
4 I've had the building leased once. I couldn't deliver,
5 because it was four years ago. And for two years, I sat
6 there with a fully negotiated lease ready to sign it and
7 couldn't give the tenant a delivery date. I had a
8 second tenant I was very close to. I'm not able to get
9 delivery. I'm very comfortable that space will be
10 leased.

11 And there is nobody that's got any motivation
12 any greater than me to make sure that I take care of my
13 existing tenants. I mean, I'm the guy who lives and
14 dies by it. And the one benefit you have is you got a
15 guy that's been here for 17 years. You know, if there
16 was ever a time in my career that there was a time to
17 sell projects if you were a merchant builder and just
18 wanted to capitalize and get out, it was probably three
19 or four years ago. And if nothing, we basically
20 recommitted to all of our projects. I just reinvested
21 and bought out my partner in the Target project.

22 And so, I mean, I don't -- I don't know what
23 else I can do other than to show everybody I'm committed
24 to the City and I'm committed to doing a great job on
25 the project. I won't rush the project. So if Wal-Mart

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1 moves across the street, that traffic generation will be
2 greater than it existed in the existing Wal-Mart lot.
3 But what I can tell you -- so I don't think you lose any
4 of that traffic. I think you actually expand it. But
5 what I can tell you is I'll be committed to do it right,
6 and that I won't rush out just to get a tenant in order
7 to fill the space. We're going to get the right tenant
8 that are going to make that intersection viable over the
9 long-run. And I think we have shown that time and time
10 again. And we're committed to continue to do that.

11 COMMISSIONER HEINITZ: Thank you.

12 CHAIRMAN KISER: Commissioner Olson.

13 COMMISSIONER OLSON: Thank you for coming
14 tonight and speaking on behalf of this project. You do
15 have a very -- a reputation that is admirable, and I
16 don't want to impugn it at all, but I think comparing
17 this project to Riverbank is a little misguided
18 considering that there was no K-Mart across town in
19 Riverbank, there was nothing in town, much less a
20 Safeway across the street. And there is no doubt that
21 that project is -- has brought a lot of revenue. But I
22 think that it's misleading to compare this particular
23 corner and the Wal-Mart to what happened in Riverbank
24 when there was absolutely nothing else. And if the
25 point you are making is that you believe in your ability

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1 to bring other tenants in, I'll accept that. But other
2 than that, I'm not sure that I can accept the
3 comparison. So I just wanted to state that.
4 MR. BROWMAN: Yeah. And let me -- maybe I
5 didn't do a very good job of explaining. What I was
6 trying to say is -- I don't think Wal-Mart is the savior
7 to everybody's problems. But what I do think is that
8 they're a great anchor tenant and they drive a
9 significant amount of traffic. And what I was trying to
10 point out in the analogy to Riverbank is, Riverbank, as
11 a community, is not capable of supporting the type of
12 retail that's there without drawing from a much larger
13 trade area. And the analysis that I was trying to show
14 was that by expanding and putting a million square feet
15 at that intersection, you expand Lodi's trade. Not
16 because Wal-Mart is some superstar, but by creating that
17 much synergy at that intersection.

18 And I can only give you some examples. Like
19 part of -- for years and years we tried to get somebody
20 like a Best Buy or a Borders to look at Lodi's
21 community, and it was too small. But when you put that
22 much -- that concentration of retail in an intersection,
23 notwithstanding whether it's Wal-Mart, but it's quality
24 anchor tenant kind of retail like your Targets,
25 Wal-Marts, Safeways, Food-4-Lesses, Penney's, you open

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1 the base of who else will take a look at that
2 intersection because of the amount of traffic it drives.
3 So I apologize if that came out -- but that's really
4 what I was trying to get at is the synergy that's
5 created.

6 CHAIRMAN KISER: Do you have any questions?

7 COMMISSIONER KIRSTEN: Yes. Mr. Browman,
8 thank you again. You answered one of my questions, but
9 the other one would be, and I think you alluded to it a
10 little bit, that the net number of jobs, I suppose, for

that powerhouse at four corners, for your project, is a function of, I guess, how quickly it builds out. And I don't know if there's been a published time line.

But I guess my question is, have you had to amend your time line or your projections based on the difficult economy, or are you still pretty much on track with your original projections?

MR. BROWMAN: Yeah. You know, Lodi is sort of an interesting one. I've been working on this project for about eight years. So unlike a lot of projects that were being done like up in Sacramento or some other communities, they were all done based on a lot of housing growth occurring. Lodi has got limited growth. And so the demand for this project actually existed seven or eight years ago. So although the economy has

slowed down, it may impact to some degree the -- how quickly things happen. I don't believe that it's the same demand problem that you'll have like, for example, in Roseville where they were expecting 5,000 homes to be built in a very short period of time.

I don't know if that answered your question. So I think that the -- I think that ultimately -- I believe there's tenants for what we want to do. I don't believe we're overbuilding the market. And that's not something that we're going to be willing to do. We're going to lease the space to the right tenants when those tenants are available.

And I think in the best case, if the Planning Commission saw it in their discretion to approve this project, we would still have to go back to court, and it would another year before the project is built. It may be two years before anything gets out on that site. So my -- if I had to hold up a crystal ball, I would say that '09 is a difficult year and '010 will be a somewhat difficult year, and I think '011, I think retailers will be back starting to do new projects again and stuff like that. So I don't think -- unfortunately, given the delays that we've had, I don't think that you're talking about a significant time lag in the reality.

COMMISSIONER KIRSTEN: If you look at the

crystal ball, once you get to the golden shovel stage, from that point on, could you give me any kind of a prediction as to how long it takes to build out the shopping center?

MR. BROWMAN: Yeah. Absolutely. I would say phase one -- and you have to understand, we stopped leasing the project a couple of years ago, because it was going so long we couldn't -- we didn't know where to make deals with tenants and when we could deliver spaces, and tenants would put termination rights in their leases if you didn't deliver.

So I would say, let's say it took us until the end of the year -- if we were to get approved, it took us to the end of year to get a court decision, we got the ground in spring, then it would probably take seven to nine months to build the first phase of the project. And then each phase takes about, say, as quick as four months and as long as six and a half months. So you can actually start progressing pretty quickly with your buildings once you get going. And so the first one happens probably in nine months, because you're doing a

22 lot of off-sites and a lot of on-sites. And then all
23 the rest of the utilities are stubbed and stuff like
24 that, so it happens pretty quickly, say, four to six for
25 each other phase.

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1 And if you want to look historically, I think
2 we built the Target and the Wal-Mart, the existing
3 centers, I think we built them in three or four phases.
4 So that would probably be -- I mean, I think that would
5 be a reasonable approach to look at as well, three to
6 four phases. You got 12 building pads. Some would go
7 right away, like, for example, you know, Walgreens is
8 interested in going on the corner and has been for four
9 years. There's three or four pads that would go right
10 away. But I think we would take time to do it right to
11 make sure we have the right tenants.

12 CHAIRMAN KISER: Go ahead, Mr. Heinitz.

13 COMMISSIONER HEINITZ: Yes. I think there's a
14 great deal of confusion out there that is being promoted
15 by Wal-Mart, and the fact that all of these wonderful
16 numbers that are going to come into Lodi, the jobs, the
17 tax revenue, the income is all based upon not only
18 Wal-Mart, but the stores that will come along with the
19 Wal-Mart. At this time, do you have any of these
20 businesses that have committed to those other spots
21 whatsoever?

22 MR. BROWMAN: Yeah, we have one, two, three,
23 possibly a fourth of the pads that are committed right
24 now. And we stopped. We actually could have probably
25 leased seven or eight of them, but we stopped, because

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1 we couldn't understand, you know, where you make a deal
2 and what the delivery time frames are.

3 But, you know, this is -- this is a very
4 unique situation. This is a case where you got a
5 project that's been ready to go for eight years, let's
6 say, and probably a little bit longer. It's very
7 atypical, because most of the retail stuff that you're
8 seeing in a lot of other communities was predicated on
9 retailers getting way ahead of the growth.

10 And Lodi is not a community like that. That's
11 one of the beautiful things about it. It's slower
12 growth, it's -- you know, the people take a real good
13 look at what's going on. It's not like, you know,
14 they're approving 6,000 units and somebody has got to
15 run out two miles from the intersection of a real
16 intersection today and tie that up so they can build a
17 store three years from now.

18 So it's -- you know, so I think it's a little
19 bit different in that regard. And Sacramento is a great
20 example of a lot of that. There's been a ton of that in
21 other portions of the Central Valley as well.

22 COMMISSIONER HEINITZ: I guess one of my
23 concerns is, to add insult to injury, would be the fact
24 that we would have a beautiful new Wal-Mart in that
25 corner, we have an empty Wal-Mart across the street, and

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1 then we would have empty pads or empty buildings, if you
2 did build them, with no other stores. And that would be
3 a real horrible situation.

4 MR. BROWMAN: Absolutely. I can assure you,
5 you know, I feel very comfortable that we would be able
6 to lease those pads without much difficulty, and we will

7 lease the Wal-Mart building. That is our number one
8 priority.

9 In fact, we -- at this point, we will not
10 lease our junior anchor building -- and that's one of
11 the benefits of having someone like us. We're motivated
12 to make sure we take care of our existing centers first.
13 And so the junior anchor building that's part of the
14 Wal-Mart will not get leased until we have our Wal-Mart
15 building leased. You know what I mean? So that's
16 actually one of the positive benefits that flow from
17 something like this. Rather than having disparate
18 ownerships where some guy doesn't care about what
19 happens next to him.

20 And, you know, we love Food-4-Less. They're a
21 great tenant. It is unfortunate that we're in this
22 situation, because we have a very good relationship with
23 Chris, and they're a fantastic tenant and have been a
24 great tenant for us over the years.

25 CHAIRMAN KISER: I have a question for you.

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1 In the agreement, it states that prior to the issuance
2 of a building permit, you have to have 50 percent leased
3 ahead of time. Do you feel you can achieve that?

4 MR. BROWMAN: Yeah. Absolutely.

5 CHAIRMAN KISER: And my second question is,
6 what's going to make people go to you instead of the
7 guys across the street where they've had a vacant
8 building for approximately a year now in the Lowe's
9 shopping center and have them become a tenant there?

10 MR. BROWMAN: That's their 12,000-foot
11 building?

12 CHAIRMAN KISER: Yes.

13 MR. BROWMAN: Yeah, I think we're -- I think
14 that Mr. Geweke does a good job with his properties. I
15 think we are -- we do one thing, and we pride ourselves
16 on our ability to work with tenants. We build shopping
17 centers and we own and manage them and lease them on our
18 own behalf.

19 And I think -- that's a very small building.
20 And what we're talking about here is the ability to
21 attract retailers in the 25- to 120,000-foot range.
22 That's something that they don't have the flexibility.
23 And, frankly, we have people that are committed to doing
24 nothing on our projects but lease them. And that's one
25 of the reasons why we have a higher occupancy rate. We

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1 do multiple transactions with tenants. You know what I
2 mean? And that gives us the ability to convince tenants
3 they should come to our project versus a different
4 project, you know, because it's those long-standing
5 relationships that we've had over the years.

6 CHAIRMAN KISER: Thank you. Any questions?
7 None at this time. Thank you.

8 MR. BROWMAN: Thank you very much.

9 CHAIRMAN KISER: Would the opponents like to
10 get up for rebuttal? Mr. Mooney is going to want some
11 time, too?

12 MR. JOLLEY: Yes.

13 CHAIRMAN KISER: You have five minutes.

14 MR. JOLLEY: If you can give me one minute to
15 at least let Mr. Mooney wrap up --

16 CHAIRMAN KISER: One minute?

17 MR. JOLLEY: -- and I'll try to be brief.

18 Again, for the record, Brett Jolley on behalf of Lodi
19 First.

20 Responding to Ms. Pelosi's comments first,
21 regarding substantial evidence, I would submit to you
22 that you don't really have that situation that she
23 describes. And that in fact goes to your question that
24 you asked, Commissioner Kiser, of why did you not get it
25 as a Planning Commission when it was prepared in

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1 January. It wasn't released until March. And, again,
2 why does apparently a new letter that I have not seen,
3 and probably most of you have not had the opportunity to
4 review in detail, come in today?

5 And the answer is because Wal-Mart is not
6 putting that in there to educate you. They're putting
7 that in there to pad the record, so when they go to
8 court, they can say, we have evidence in the record that
9 the Commission considered and adopted. It's -- there's
10 not an intent for you to read or consider that evidence,
11 otherwise, it would have been produced to you when it
12 was available and not submitted to you at the last
13 minute when you can't review it.

14 And with respect to the evidence that's been
15 prepared, it is not objective. It is -- it is
16 essentially biased evidence prepared by Wal-Mart's
17 consultants. That's true of CBRE that you got the
18 letter from, apparently, in January, and it's also true
19 of BAE, Bay Area Economics, that has prepared the
20 Environmental Impact Report.

21 And I say that because in 2008, September of
22 2008, the City of Tracy asked BAE how many Wal-Mart
23 Supercenters have you done environmental review on. And
24 BAE said, just off the top of my head, we've done Suisun
25 City, Redding, Antioch, Crescent City, Lodi,

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1 Porterville, Ceres, Soledad. So off the top of his
2 head, the BAE representative came up with eight
3 Supercenters that BAE is working on. BAE has a
4 relationship with Wal-Mart all over, and they are not
5 going to be inclined to bite the hand that feeds them.

6 That's why I would encourage this commission
7 to conduct an independent analysis, not by BAE, not by
8 CBRE, not by Professor King. Have it done either by
9 your staff or by your staff engaging someone that hasn't
10 done work with the other consultants.

11 Regarding jobs, the interesting thing is the
12 letter submitted by Wal-Mart at the City Council hearing
13 said, no, no, no, Lodi First has overestimated the
14 number of jobs that will come from this project. Our
15 argument was it triggered a water supply assessment
16 requirement.

17 They did that because -- we did that because
18 we based our evidence on press releases issued by
19 Wal-Mart on new Supercenter openings. But, in fact, the
20 Supercenters employed much lower numbers than announced
21 in Wal-Mart's own press releases. So that tells you
22 that you're not getting accurate information. You got
23 the marketing side that's going to play it up, and the
24 other side that won't.

25 CHAIRMAN KISER: You got about two minutes or
0059 a minute.

2 MS. CHADWICK: One minute.

MR. JOLLEY: Thank you. And, finally, regarding Mr. Browman and Wal-Mart being a great anchor tenant for this site, I don't think we need to have a synergy overriding consideration, and that is because you already have a Wal-Mart at that intersection. The benefits of that Wal-Mart should really be fully realized by the City at this point. But, in fact, what you would be doing is adding so much additional square footage that that synergy is going to hurt the rest of the city.

And I think one example of this can be seen by the story in yesterday's paper about downtown Starbucks closing. Downtown Starbucks is closing, but the three that are located at that intersection will remain open. And when you get that synergy out at that intersection, it really hurts the core of the city, because it draws people away. Thank you.

CHAIRMAN KISER: We got a question for you.

COMMISSIONER HENNECKE: We have seen a lot of numbers on these reports. And, of course, you know, pros and cons. You guys have had your opportunity. Tell me if I'm correct on my take here. We have got a range on the tax dollar assessment of a low of 134,000

to a high of 1.3 million; is that correct?

MR. JOLLEY: Approximately, yes.

COMMISSIONER HENNECKE: And then on the job range, we've got a range of 600 to 1,000; is that correct?

MR. JOLLEY: Correct.

COMMISSIONER HENNECKE: Okay. The one thing that puzzles me, and I'll give you a little background on it is, I had the good fortune of taking statistics in college from a very smart lady who was working for Gray Davis at the time who was a spin doctor. And she used to leave our class and go out and do whatever they needed for press releases. And the one thing that she taught me is that you can make stats say whatever you want them to say. The one thing that puzzles me is, you being against this, you have not been able to come up with any negative numbers. All of these are in the plus; is that correct?

MR. JOLLEY: It's in the plus for the shopping center itself. So there's no evidence that says the shopping center itself will actually have a negative number of jobs or negative taxes. But you have to look at the comparison of the shopping center against what it's taking away from the rest of the city.

COMMISSIONER HENNECKE: So what you're asking

us to do as planning commissioners is, on our overriding consideration, is to take a positive gain in tax dollars and a positive gain in jobs and try to quantify that to a number, a threshold that says that if it's below this dollar amount, even though it's positive, I can't do this? Is that what you're asking?

MR. JOLLEY: I don't know that you have to reach an actual threshold, but you need to have the information, credible information, there before you so you understand what those numbers are, what are your real tax benefits going to be. It may be CBRE is correct and it is 1.3 million. I'm not an economist. I don't know. But that's information that seems to

14 conflict with much of the other information in the
15 record and was produced by Wal-Mart at the 11th hour.
16 So I have a feeling that's probably not accurate. Maybe
17 it is. And maybe you get that information, and as a
18 commission, you say, well, looking at these benefits,
19 they really do outweigh the burdens, and we can adopt
20 this statement of overriding consideration.

21 COMMISSIONER HENNECKE: Yeah. Well, I can
22 understand that these are all just projections and, you
23 know, crystal ball numbers. But I guess I'm really
24 amazed that you can't come up with anything more
25 negative being against it.

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1 MR. JOLLEY: I'm a positive guy.

2 COMMISSIONER HENNECKE: Okay. Thank you.

3 CHAIRMAN KISER: Questions? That's all.

4 Thank you.

5 MR. MOONEY: I don't have anything else to
6 add.

7 CHAIRMAN KISER: Thank you. I would like to
8 take comments from the public. Let's take a little
9 recess, please. Five minutes.

10 (A recess was taken.)

11 CHAIRMAN KISER: Back to order. We have the
12 cards here. First, Chris Podesto.

13 MR. PODESTO: Good evening, Chairman and
14 Commissioners. My name is Chris Podesto, and my
15 business address is 8014 Lower Sacramento Road,
16 Stockton.

17 I do have a tremendous amount of respect for
18 Mr. Browman. We are friends. And that's why he's here
19 in a sling tonight. We decided to arm wrestle over this
20 issue.

21 Anyway, on a serious note. Many of you know I
22 come here tonight wearing two hats: Director of
23 marketing for Food-4-Less and Rancho San Miguel, and a
24 local area resident. And what I have to say here is
25 equally influenced by both roles.

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1 The City Council may have overruled your
2 decision not to certify the EIR. This does not mean
3 that you should approve this project here before you
4 tonight. The EIR tells you this project may close
5 several existing businesses in Lodi. Our store is near
6 the top of the list. We agree, and think that store is
7 in greater jeopardy than the EIR would suggest.

8 We coanchor the southeast corner of Lower
9 Sacramento -- Lower Sac and Kettleman Lane with the
10 existing Wal-Mart. If this project goes forward, not
11 only do we lose our 120,000 square foot Wal-Mart
12 coanchor, but we will also see the addition of a new
13 discount supermarket across the street in a part of town
14 that is already inundated with supermarkets.

15 A couple of these changes, with the current
16 economic downturn, yield a recipe for disaster. Not
17 only could this create a vacant commercial space in west
18 Lodi, but will also result in a loss of community
19 partners such as Food-4-Less and other local businesses
20 who have contributed to Lodi's well being.

21 While this decision to certify the EIR may be
22 out of your hands, the decision of whether to approve
23 this project is not. You must balance the benefits of
24 this project against the costs. Is approving this

25 340,000 square foot project at the expense of other

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1 retailers and possibly the downtown supported by other
2 benefits? Is approving this project in west Lodi at the
3 expense of east Lodi worth the cost?

4 CHAIRMAN KISER: You got a minute, Chris.

5 MR. PODESTO: I do not think so. I can tell
6 you that Food-4-Less will seriously consider placing a
7 supermarket in east Lodi. But if the Supercenter goes
8 forth, that will not happen. The Supercenter will
9 simply place too much pressure on the existing
10 groceries -- Lodi grocers, and will likely lead to
11 vacancy of existing shopping centers and losses of their
12 tax revenue. Any increase in tax revenue will be offset
13 by the losses, as well as increased city need for
14 services.

15 For these reasons, I urge you not to approve
16 this project. Any questions?

17 CHAIRMAN KISER: Yes. Mr. Heinitz.

18 COMMISSIONER HEINITZ: Yes. Thank you,
19 Mr. Podesto. I appreciate you coming forward tonight.
20 Just a couple very simple questions. Does Food-4-Less
21 own the building that they're in?

22 MR. PODESTO: No.

23 COMMISSIONER HEINITZ: It is owned by?

24 MR. PODESTO: Mr. Browman.

25 COMMISSIONER HEINITZ: You have a lease.

0065

1 MR. PODESTO: Yes.

2 COMMISSIONER HEINITZ: How long do you have
3 left on the lease? Do you have any idea?

4 MR. PODESTO: I would have to defer to
5 Mr. Browman on that.

6 MR. BROWMAN: Seven to eight years.

7 MR. PODESTO: Seven to eight years we'd say.

8 COMMISSIONER HEINITZ: Seven to eight years
9 comes up, the Wal-Mart Supercenter goes in, your sales
10 are lacking, what would you tell me?

11 MR. PODESTO: We will absolutely -- well, when
12 you say lacking, I guess to what extent? The EIR would
13 suggest that our business would be impacted by at least
14 40 percent. If that's the case, we would absolutely
15 close the doors. We could not afford to lose 40 percent
16 of our business.

17 COMMISSIONER HEINITZ: Thank you.

18 CHAIRMAN KISER: Commissioner Kirsten.

19 COMMISSIONER KIRSTEN: Hi, Chris. Quick
20 question. How many employees are there currently in
21 your facility, Food-4-Less?

22 MR. PODESTO: Approximately 140, give or take.

23 COMMISSIONER KIRSTEN: And I don't know if
24 this is a number that you want to make public, but can
25 you give us any kind of estimation of the sales tax -- I

0066

1 mean, it's all grocery, or is it -- it's a very high
2 percentage of grocery, correct?

3 MR. PODESTO: High percentage of grocery. We
4 are a taxable grocery as well. But I am not prepared to
5 give you those figures tonight. If the Planning
6 Commission would like those figures, I would be glad to
7 bring them to you.

8 COMMISSIONER KIRSTEN: I think it suffices.

9 It's a high percentage of grocery. And would you say is

the Rancho San Miguel market also -- would you say it could be impacted by this proposed Supercenter?

MR. PODESTO: There's no question. This is -- this is -- let me answer your question directly. There's no question that the socioeconomics of the east side will be a draw to the west side. You will be pulling people from Cherokee Lane to west Lodi. That's just the nature of the consumer base in Wal-Mart's demographic.

With respect to a Supercenter, the tax revenue, you already have a tremendous tax base from the existing Wal-Mart. The Supercenter really isn't going to generate a tremendous amount of additional taxes, because the additional component will consist of grocery, which doesn't create a lot of tax dollars for the City.

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COMMISSIONER KIRSTEN: So just to clarify, the greatest impact this community is likely to suffer if -- if Food-4-Less or Rancho San Miguel are impacted to the extent it could possibly go out of business, then the greatest impact to our community is likely to be the loss of the jobs, correct?

MR. PODESTO: Oh, there's no question. It will simply be a redistribution. To suggest that we're going to pull from this greater area around us is kind of deceiving. We all know that Galt is projected to have a Wal-Mart or Supercenter, we know that they're pushing to have one on Eight-Mile Road. What is this radius we think we're going to pull from? And as Mr. Browman indicated, Lodi does grow at a slow pace. So where are these incremental customers coming from?

And if in fact you bring in Costco, which needs to do approximately 700,000 in grocery, Wal-Mart is going to want to do 700,000 in grocery, where is the 1.4 million in grocery going to come from? Since you have a Costco in Stockton, you have Wal-Marts in Stockton, you're going to have a Wal-Mart in Galt, where -- seriously, where do we think these incremental dollars are coming from? And since when do we need a commercial center every five minutes away? It's kind of crazy.

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COMMISSIONER KIRSTEN: All right. That's all I have.

VICE CHAIRMAN CUMMINS: Thanks for being here, Chris. Thanks for the bags, too. I appreciate that.

MR. PODESTO: You're welcome, sir.

VICE CHAIRMAN CUMMINS: And I wanted to ask a question. How long ago -- or how old is Rancho San Miguel, the actual --

MR. PODESTO: Five years.

VICE CHAIRMAN CUMMINS: Five years? And when you opened up Rancho San Miguel, up through today, did net sales of Food-4-Less go up or down with the addition of Rancho San Miguel? It's probably the most new -- the newest grocery store in town?

MR. PODESTO: Yeah. They actually went down.

VICE CHAIRMAN CUMMINS: Food-4-Less went down?

MR. PODESTO: Yes, sir.

VICE CHAIRMAN CUMMINS: But together, they had to have gone up.

MR. PODESTO: I'm sorry?

21 VICE CHAIRMAN CUMMINS: Since you own both of
22 them together, obviously the net sales together would
23 have gone up.

24 MR. PODESTO: Well, you certainly double your
25 overhead. And Food-4-Less was very much impacted by

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1 Rancho San Miguel on the east side. Again, the people
2 from the east side in many cases will pull to the west
3 side and vice versa.

4 VICE CHAIRMAN CUMMINS: But, I mean, opening
5 Rancho San Miguel didn't make Food-4-Less go out of
6 business; is that correct?

7 MR. PODESTO: No. But I think that's an
8 interesting comparison.

9 CHAIRMAN KISER: I have a question for you.
10 Actually, what San Miguel did was provide a grocery
11 store for the east side so people could go there, and
12 Food-4-Less would provide for the west side, and some go
13 vice versa is what you're saying. Would that be a fair
14 analysis, I should say?

15 MR. PODESTO: Yeah. It's interesting.
16 Food-4-Less is a price-impact store similar to Wal-Mart.
17 It has the ability to pull from a greater distance. So
18 Food-4-Less can in fact pull from the east side. Rancho
19 San Miguel really acts as a ethnic store and a
20 neighborhood store, but it doesn't have the draw like a
21 Wal-Mart or a Food-4-Less.

22 CHAIRMAN KISER: Okay. Commissioner Olson has
23 a question for you.

24 COMMISSIONER OLSON: Yeah. Mr. Podesta, I
25 just want to congratulate you on being such a really

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1 outstanding corporate citizen in our community. And I
2 know how much Food-4-Less does, and Rancho San Miguel,
3 and I appreciate that, and I hope the community has
4 given you that appreciation.

5 Part of what I want to ask you is, really, I'm
6 trying to distill in my mind what some of the issues --
7 what some of your issues are. And I don't believe it's
8 necessarily competition, and you can correct me if I'm
9 wrong, because you have competition around town. It's
10 really more of, I think -- are you really saying it's
11 more an outsider coming in and usurping local --

12 MR. PODESTO: No. As I stated earlier, I
13 really come here wearing two hats. I live in Lodi. I
14 love this community. I am very aware of Wal-Mart and
15 their practices and what they -- the impact they have on
16 our community. The hat I'm wearing tonight, however,
17 though is Chris Podesta, corporate citizen.

18 I think that you guys all were aware of
19 Measure W. We know that there is blight and decay on
20 the east side of town. To bring a Supercenter to this
21 west corner, in my opinion, is just silly. How are you
22 ever going to stop the blight and bring business to the
23 east side if, in fact, you're going to put all your eggs
24 in one basket on the west side. You're going to
25 perpetuate the blight, and you're going to stop all the

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1 businesses such as ourselves from considering partnering
2 on the east side.

3 COMMISSIONER OLSON: That helps. Thank you.

4 COMMISSIONER HENNECKE: Wouldn't -- I'm sorry.
5 Wouldn't you consider the Reynolds Ranch project east

side stores and shopping?

MR. PODESTO: Very much so. I guess the difference with the Reynolds Ranch is we don't have a Costco in Lodi. As a citizen and a consumer in Lodi, we think Costco is wonderful and makes sense for Lodi. Our whole point is that we already have a Wal-Mart, and we certainly don't need a fifth grocery store on that corner. It makes terrible planning sense. Somebody has got to go. Something has got to give. This notion that nothing will give is not real world, and I think we're seeing that in our current economic planning.

COMMISSIONER HENNECKE: If Costco was to try to move into the Reynolds center, would that pose the same problem for you as the Super Wal-Mart?

MR. PODESTO: No. Again, as a consumer of Lodi -- and, again, I have to articulate I wear two hats -- I think a Costco would be fantastic. I wouldn't oppose a Costco at all. We don't have a Costco in Lodi, but we already have a Wal-Mart.

COMMISSIONER HENNECKE: Thanks.

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CHAIRMAN KISER: Thank you. Next person, John Ibarra. John Ibarra?

MS. CHADWICK: He's already gone.

CHAIRMAN KISER: John Ibarra? Roger Oster?

MR. OSTER: My name is Roger Oster. I live at 2026 Oxford Way here in Lodi. Born and raised in this town. I thought the meeting was going to be talking about the three items that you were supposed to be voting on tonight. All I've heard from both sides, of course, is a rehash of everything that's been talked about before; the fact that Food-4-Less is going to go out of business because of Wal-Mart coming in, and Safeway, and Lodi downtown being deteriorated.

Things have deteriorated in Lodi not because of Wal-Mart coming in, because it hasn't come in yet, the Supercenter, but because of bad management and, of course, the economy.

As far as the people at Safeway, they're going to shop Safeway regardless if there's a Supercenter. The people who shop at Raley's will shop at Raley's regardless of whether there's a Supercenter. I agree. Food-4-Less may be hurt. But being a person who shops at all of the different markets, and I used to shop the Food-4-Less continuously until about a year ago when the employees started bad mouthing Wal-Mart while we were in

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there shopping and checking out. That's not a thing to do. If they don't like it, that's fine. But we're supposed to have free society of competition.

Now, all the projections that everybody makes, you realize that all projections are crystal ball projections, and usually they're more than what's going to really happen. As far as you're saying, you're getting reports, and you got them here at the 11th hour, and you haven't had time to read them. Well, our great politicians in Washington, they just passed a trillion dollar budget, 18,000 pages that they didn't even read.

If you haven't already decided on what you're going to do before you come to this meeting tonight, then what are you doing here and how can you make a decision based on the few comments that you've heard time and time again?

17 Look at what you're supposed to be voting on
18 and vote on that. Don't worry about the gobbledegook.
19 The lawyer was talking about Seinfeld, walking around
20 with papers to look busy. He walked around talking
21 words to make himself look busy, which nobody understood
22 what the heck he's talking about. You people aren't
23 lawyers. You have no idea what's right or what's wrong.
24 The young lady from Wal-Mart, she was correct.
25 There are experts on this side and there are experts on

0074

1 that side. Who are you going to believe? You have to
2 just toss them up in the air and pick out the one you
3 want to believe. So that's what it amounts to, what you
4 think is what's going to happen.

5 And, unfortunately, you have no responsibility
6 to the public, because you're not voted on. You're
7 appointed. So you're trying to tell the City Council
8 what they can and can't do. Well, go ahead, vote on the
9 way you want. But we need a Wal-Mart in this town to
10 keep us sustained.

11 We have got businesses all over Lodi being
12 built that are standing empty. That's the blight.
13 You're approving all these other small constructions
14 when there's not anybody in them. What for? We have a
15 tremendous amount of empty buildings around.

16 Wal-Mart at least is going to be occupied and
17 built. And I believe in the developer who is going to
18 do it, that he will get people into the old store and he
19 will fill up that center. But that's my belief. You're
20 the ones who are voting on it. Thank you.

21 COMMISSIONER KIRSTEN: I'll just comment. I
22 would like to say thank you for coming forward and
23 offering your viewpoints publicly so we can take them
24 into consideration. Thank you.

25 CHAIRMAN KISER: Leo Duncan, please.

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1 MR. DUNCAN: My name is Leo Duncan. I reside
2 at 35 River Pointe Circle here in Lodi. Five years ago
3 last month I moved into the house that I built in that
4 gated community. I have enjoyed it very much and
5 enjoyed being a resident of Lodi.

6 I have listened to the arguments both ways
7 that have been going on. And as I have heard not only
8 tonight, but other times, people talking about they want
9 to have a certified account of how much income and how
10 many jobs it's going to be. They're requiring that they
11 give something out of prediction that is going to hold
12 up and be accurate when it's completed. And yet we have
13 been years in process, and so that's not a very easy
14 thing to do. However, it seems to me it's a simple
15 thing to count nickels and noses in the existing
16 locations. You can see progress in the cities where
17 they have built. And if you look at the national income
18 of Wal-Mart, they are consistently growing and ahead of
19 the curve even in this depression, or recession, or low
20 business cycle, or whatever you wish to call it.

21 Yes, competition will come as a result of
22 this. I have in the past, in the '70s, owned four
23 businesses. I saw Costco come in to where I live and
24 created competition for me, but it didn't put me out of
25 business. It stimulated me to find better ways to

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1 market what I had.

I don't -- I think that those who are looking for the problems that Wal-Mart is going to create, according to their theory, it's like looking in a black room for a black -- a dark room for a black cat that isn't there. You can't prove it, but you can see -- you certainly can see the progress in existing locations.

When I built the house in Lodi here, it required permitting, as you well know. And the house I built is 2,800 square feet and single floor, and it did require a great deal of permitting and some exceptions. And it took a long time, because at that time, the building cycle was very, very busy. And you, the Planning Commission, even farmed out some of their plan checks to Sacramento. And so I know what delay can be. But I think it is unconscionable for a city to hold --

CHAIRMAN KISER: You got a minute.

MR. DUNCAN: -- thank you -- to hold any developer and/or landowner at bay for this length of time. I think that it is wrong. I have seen in other cities where this kind of thing happened, and it put a smaller developer out of business, bankrupt. And it does not speak well for our city. You should give them an up or down vote. It should have been done years ago. It's too far into this thing.

I approve -- I am in favor of and would urge you to approve this project. Thank you.

CHAIRMAN KISER: Thank you. Ann Cerney.

MS. CERNEY: Ann Cerney, 900 West Vine Street, Lodi. I am here mainly to just register my presence --

CHAIRMAN KISER: Can you please speak up a little bit, ma'am?

MS. CERNEY: Myself and a group, Citizens for Open Government, have been involved in this since the beginning. And I just wanted to contain my standing and indicate that I'm here.

I do have one more comment to make, that you've already determined in the previously reviewed Environmental Impact Report, that you found it inadequate and you overruled. I find it very, very difficult to imagine that the decision that -- the certification of this EIR is going to be enough to support the findings that are recommended. And the information, I don't believe, is there, but deliberately ignored some pretty extensive legislation that's been passed since the previous decision, and I think those are very telling factors.

And I urge you to make the finding -- make the findings -- to not make the recommended findings. And I do ask that you consider seriously the alternative of

no-project. Thank you.

CHAIRMAN KISER: Mark Anaforian? If I messed it up, I apologize.

MR. ANAFORIAN: No, you're pretty close. My name is Mark Anaforian. I live at 625 Black Oak Way here in Lodi.

This meeting has been all about assumptions. All we've heard is one side assume this way, one side assume that way. I want to stick to facts. At the last Planning Commission meeting, the representatives of Wal-Mart used the La Quinta store as their shining example. It should be noted -- or noted that the La

Quinta store was the first Supercenter built in California. But for the sake of argument, let's use that store as a barometer.

That store was opened in 2004, and unemployment in La Quinta was 2.6 percent. In 2005, it was 2.4; in 2006, it was 2.3; and by 2007, it had risen to 3.5 percent. This is an example -- this is an increase of .9 percent unemployment.

By way of comparison, Lodi had only a .2 increase in unemployment at that time. It should also be noted that California as a whole had a .6 percent increase. So La Quinta actually was higher than the State average. These numbers reaffirm the argument that

when a Supercenter opens, there are a couple of years of increased jobs, but those tail out pretty quickly.

The second point I want to bring up is the impact on other stores. For many years I managed a major -- or a major drug chain here in town. When the first Supercenter was going to be built, we heard the same arguments. It's not going to affect business, there won't be a loss of jobs, what have you. Well, I'm here to tell you that our sales the first year the first Wal-Mart was opened went down 30 percent. Now, they did come back. Not to anywhere near the level before. We wound up rising to about 18 percent loss. What that correlated to was a loss of jobs and a loss of folks that were -- good paying jobs, jobs with benefits. Some of those folks did wind up going over to Wal-Mart and working at a lesser pay and with no benefits.

Thirdly, the one thing I want to stick to is the Wal-Mart has -- and this was 2007 numbers. Wal-Mart has four times more calls than Target for police service. Lodi News Sentinel reported in the past year, 2007, Wal-Mart had 507 calls for service, Target had 123, K-Mart had 198. If you take into consideration the cost of a police officer for the 507 calls, that's \$17,000. That does not correlate into administrative costs, court costs, whether there's two police officers

in the car, what have you.

So when you're looking at the whole of what Wal-Mart brings to you, you have to look at the whole. You have to look at what it's going to cost in jobs, what it's going to cost in revenue, what it's going to cost in service to the City.

Lastly, I just would like to leave you with the fact that you're talking about adding a grocery store. Most grocery store items are nontaxable. I would love to know where these numbers are coming from. Wal-Mart sells some food items in their stores right now that are taxable, sodas, beers, those type of things. They'll sell those in the new store. But, predominantly, the stuff that they want to bring in that's different are nontaxable items. I would just love to know where this is coming from.

And I'll leave you with this one, too. Mr. Browman reaffirmed my point when he said Lodi is a slow-growth community. Lodi is a slow-growth community. Being as we are a slow-growth community, where are these additional tax dollars coming from if they're not coming from the existing business? Where are these employees coming from unless they're coming from existing

24 businesses?

25 I got a lot of friends that are contractors.

0081

1 They're not building new homes. They're definitely not
2 building new homes in Lodi. What they're doing is
3 redoing older homes. So if somebody could please
4 explain to me where we're going to pull from and where
5 these folks are coming from and where these extra
6 dollars are coming from because, frankly, right now, I
7 don't have a whole lot of extra dollars. If you could
8 explain that to me, I would love to hear it. Thank you.

9 COMMISSIONER KIRSTEN: Mark, just a

10 question --

11 MR. ANAFORIAN: Absolutely.

12 COMMISSIONER KIRSTEN: -- for you. Who do you
13 work for?

14 MR. ANAFORIAN: Right now, I'm actually in
15 sales. I don't work for any groceries or anybody right
16 now.

17 COMMISSIONER KIRSTEN: And on the subject of
18 the higher rate of police calls or crime --

19 MR. ANAFORIAN: Yeah.

20 COMMISSIONER KIRSTEN: -- where did those
21 numbers come from?

22 MR. ANAFORIAN: Those numbers came from the
23 City of Lodi. I pulled off their web site the same way
24 the unemployment numbers came from the La Quinta city
25 web site.

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1 COMMISSIONER KIRSTEN: Okay.

2 MR. ANAFORIAN: Actually, give me a second
3 here. That came from Police Captain David Mann.

4 COMMISSIONER KIRSTEN: Could you just state
5 again the statistic that you cited regarding the number
6 of calls there?

7 MR. ANAFORIAN: Sure. David Mann had said
8 four times as many. Lodi News Sentinel reported that
9 Wal-Mart had 507 calls for service, Target had 123, and
10 K-Mart had 198 in that same time period.

11 COMMISSIONER KIRSTEN: Those are calls for
12 service, is that right, over a one-year period?

13 MR. ANAFORIAN: Those are calls for service
14 where a police officer had to respond to the scene, yes.

15 COMMISSIONER KIRSTEN: All right. Thank you
16 very much.

17 MR. ANAFORIAN: Absolutely.

18 CHAIRMAN KISER: Okay. Brad Clark?

19 MR. CLARK: Good evening, Commission Members.
20 My name is Brad Clark. I live on Westbridge Drive here
21 in Lodi.

22 I think it's important to look at the overall
23 job loss to the community if we allow another grocery
24 store to go on this corner. And I urge you to think
25 about Safeway, Raley's, Save-Mart, Food-4-Less, Apple

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1 Market, and Rancho San Miguel that was brought up
2 tonight as well.

3 It is without a doubt that one of these stores
4 will close. And the ones that don't close, I think, are
5 going to suffer significant impacts to their sales, with
6 a result of loss of jobs, reduced hours, less income to
7 the community, and unhigh paying jobs.

8 That's a huge impact on our community. As a

9 tax payer in this community, how does our community
10 absorb that loss of tax base? If they're not generating
11 the income, where are they spending their money? They
12 don't have it to spend. The dollars are tight now. If
13 I had to work less hours in my job, I would have to cut
14 back my household spending. My family will not go to
15 the movies, we won't go out to dinner, we won't do these
16 other things.

17 So as jobs are lost, you know, what is the net
18 gain? And it's been said different ways here tonight,
19 so I don't want to duplicate what people are saying.
20 But it seriously needs to be considered that, you know,
21 yeah, there's new jobs, but they're lower paying jobs
22 than the current tax base jobs at the grocery stores,
23 not to mention, without benefits.

24 Mr. Browman stated that Riverbank, a community
25 of 20,000 people, wasn't impacted by this new retail.

0084

1 When you have a small town like that that has no retail,
2 that's going to create growth. Lodi doesn't compare,
3 because we're not a small town anymore. I mean, we have
4 significant retail here in town. What happens when you
5 do look at retail, we already have a Wal-Mart, and you
6 move it across the street and you add another grocery
7 store on the corner, something has got to close.

8 Now if we were talking about a Costco coming
9 to town, or a whole bunch of retailers such as you would
10 see at the end of Eight-Mile Road and that type of a
11 center, I don't think we would all be here, because
12 those would be incremental tax dollars, because people
13 aren't leaving our city to go to purchase items in
14 another place. We're not gaining anything new. I think
15 that if you bring new retail to Lodi, we wouldn't be
16 here at all.

17 I think that you really need to consider the
18 retaining of the Wal-Mart. If he takes the Wal-Mart out
19 of the Sunwest Plaza now, you can compare that to what
20 happened in Stockton. If you look at the Hammer Lane
21 Wal-Mart that's there, as soon as it closed, within a
22 year, they had retenanted it to -- I believe it was a
23 furniture company that was in there about six months,
24 and then closed.

25 But if you ever had any time to travel through

0085

1 Stockton -- I work in Stockton and do a lot of work
2 there -- there was never any traffic in that center.
3 And there's all of a sudden a couple of strip malls.
4 All those offices and shops in the strip malls have all
5 closed. And they keep trying to reopen it in different
6 areas, but it keeps failing. They have since --

7 CHAIRMAN KISER: You got one minute.

8 MR. CLARK: They have since split that
9 building into two different retailers. And one, I
10 believe, is a Burlington Coat Factory, and another is
11 some kind of a retailer I never heard of before. You
12 drive by there and take a look. There's anywhere
13 between 10 and 15 cars in a parking lot that holds 1,500
14 cars. Okay? That doesn't support a center.

15 You go a mile away to Food Max on the corner
16 of Hammer Lane and West Lane, that's closed as a direct
17 result of the food -- the Supercenter opening up on
18 Hammer Lane. That center has over 30 stores in it. And
19 if you drive by there now -- I counted the other day --

20 there's 21 closed shops. There's over 1,000 parking
21 stalls in that Food Max shopping center that are
22 completely empty.

23 A. So is there a financial impact on the City if
24 the Wal-Mart closes down? Yes. What is the net gain
25 that we get? You don't get taxes on groceries. Yeah,

0086

1 you get an auto center, but does that mean that one of
2 the auto centers -- one of the auto places downtown
3 closes, these local businesses that we've supported for
4 years? Our friends and neighbors are going to lose
5 their businesses because of the other thing.

6 It all needs to be considered. And are we
7 just trading tax dollars? And that's my opinion. I
8 don't think that there's any net gain there by letting
9 them come across the street. If there was another
10 retailer there, I wouldn't be standing here before you
11 tonight. I don't think there's any value to a
12 Supercenter coming across the street in that center.

13 CHAIRMAN KISER: Thank you.

14 MR. CLARK: Thank you.

15 COMMISSIONER KIRSTEN: I have a quick
16 question. Mr. Clark, what kind of business are you in?

17 MR. CLARK: I'm in the grocery business, sir.

18 COMMISSIONER KIRSTEN: Which company?

19 MR. CLARK: I'm with Food-4-Less, Rancho San
20 Miguel.

21 COMMISSIONER KIRSTEN: So I think I already
22 know the answer. So you feel like your business, the
23 business that you're associated with, is -- would be
24 directly impacted by this.

25 MR. CLARK: Absolutely.

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1 COMMISSIONER KIRSTEN: Thank you.

2 COMMISSIONER HENNECKE: I have a quick
3 question also. So your view is that you expect us, as
4 planning commissioners, to regulate commerce? In other
5 words, no matter who it was, if there was another
6 grocery store that wanted to come into Lodi, you would
7 have the same view?

8 MR. CLARK: Well, when you look at where they
9 are, a third grocery store on one corner, two being
10 price-impact, is that good planning? I would say no.
11 If you're going to draw all the businesses -- all the
12 business to one side of town, is that good planning? I
13 would say no.

14 COMMISSIONER HENNECKE: Who is the last
15 grocery store to move into that corner? Do you know?

16 MR. CLARK: Safeway.

17 COMMISSIONER HENNECKE: Safeway was?

18 MR. CLARK: Yeah.

19 COMMISSIONER HENNECKE: Did you protest when
20 they moved?

21 MR. CLARK: No.

22 COMMISSIONER HENNECKE: Why not?

23 MR. CLARK: Safeway, for one, pays prevailing
24 wages. They take good care of their employees. They
25 have full benefits to all their employees. So it's -- I

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1 don't want to say a fair fight, but at Food-4-Less, we
2 pay prevailing wage, all of our employees are fully
3 benefited, whether you work 20 hours or 40 hours a week,
4 there's no-cost benefits. So when you put those things

5 on your business, you have a higher cost of doing
6 business. We are a price-impact format. So are they.
7 Their MO, they move into towns, they drop
8 their retails, they run businesses out -- they run
9 companies out of business, and then they raise up the
10 retails. How is that good for a community? That's what
11 I ask.

12 COMMISSIONER HENNECKE: Okay. But I guess
13 what you're asking us, you want us to regulate commerce
14 and you also want us to enforce work policies and
15 benefits and all that, too?

16 MR. CLARK: That's not what I'm asking, sir.

17 COMMISSIONER HENNECKE: We're a planning
18 commission, sir.

19 MR. CLARK: My original statement was that
20 there is no net gain with the job losses. And I think
21 the tax base and everything they're talking about is a
22 farce. I think there's going to be a significant job
23 loss due to the fact that they're going to open up. And
24 they're talking there's going to be a great tax gain.
25 They're selling groceries. There's no tax gain in

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1 groceries.

2 And the jobs that are going to be lost are
3 high paying jobs. All that money that's going to be
4 lost because they've lost their jobs and the hours that
5 they work, that money is not going to be spent back in
6 the community. That's my point, sir.

7 COMMISSIONER HENNECKE: Wouldn't you agree
8 though that there's probably external forces that are
9 going to create job loss, and it's tied to the economy,
10 and probably doesn't have anything to do with this
11 project necessarily?

12 MR. CLARK: Not to the extent that this
13 project would create.

14 COMMISSIONER HENNECKE: And I know in other
15 industries, not talking grocery, but right now, with the
16 economy the way that it is, there's going to be a lot of
17 businesses that fail.

18 But the free market system is survival of the
19 fittest. So that competition is what has made America
20 the way it is. It makes people sharpen their pencils
21 and get better at their business. You don't --

22 MR. CLARK: Is that a question?

23 COMMISSIONER HENNECKE: You want to us to make
24 policy to regulate your competition as planning
25 commissioners?

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1 MR. CLARK: No, I don't.

2 COMMISSIONER HENNECKE: All right. Thank you.

3 CHAIRMAN KISER: Stan Finberg?

4 MR. FINBERG: My name is Stan Finberg, and I'm
5 an owner, one of the owners, and manager of a shopping
6 center in Lodi here called Cherokee Plaza on South
7 Cherokee Lane.

8 I'm not here to give you a bunch of facts and
9 figures like everybody else. I'm here to give you just
10 the true experience I'm having here in Lodi, the most
11 wonderful little town, except that it seems like lately
12 we are concentrating on only one area of Lodi, and
13 that's on the west side, or should I say, the
14 intersection of Kettleman Lane and Lower Sacramento
15 Road.

16 I have been here seven years now, and I have
17 seen no interest in -- from the people that have had
18 businesses here for 20, 30 years, that built their whole
19 life owning a small, little business, which is the basis
20 of America, not working for huge corporations or big
21 companies such as Wal-Mart. I'm saying that I'm very
22 close to some of these people, and I really feel for
23 them. And I said this three weeks ago when I was here
24 and in front of the Council. At that time, I had been
25 listening to the cries of many of my tenants over there

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1 at Cherokee Plaza, how they struggle to just make ends
2 meet in a business. The area on the east side has been
3 neglected. I don't hear any talk at all here today
4 about what we're going to do about the east side. It's
5 what we're going to do about the little area over there
6 way on the west side.

7 Now, I'm here to tell you that since a month
8 ago when I was here, I have lost one of my best tenants.
9 They moved out and went bankrupt. I have four other
10 tenants that are ready to go out. I work with these
11 tenants. They -- if they can't make it, I don't want
12 them to have a vacancy. We have lowered their rents
13 just to keep them in there to help them out. I've gone
14 to the City and asked, what can you do to even lower
15 their electrical bills, which are so high in this city.
16 I can't believe it. I think it's because the City adds
17 onto them, a little profit on what they buy here, just
18 like the garbage companies, see? I have to pay a higher
19 price here than I do in any other cities. I'm saying
20 that the reason this is all happening is because of all
21 this development in other areas of the city here, you're
22 not thinking about this is one big Lodi. You're
23 thinking about one area way out there and another area
24 way over here. What's happening to the people downtown?
25 That's a beautiful downtown you have there, and it's

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1 very quiet. And why isn't it a concentration of helping
2 those businesses? And I'm saying, I know that
3 eventually, if this keeps up, we'll have much more
4 blight on the east side. In our shopping center, which
5 we have about 24 --

6 CHAIRMAN KISER: One minute.

7 MR. FINBERG: -- when the last tenants go out,
8 what are you going to do then? What are we going to do?
9 We can't make payments, we can't keep it up. Are you
10 going to come over there in your city and pay and keep
11 it up? Think of that.

12 I'm just saying that I don't think that Lodi
13 can afford now to put in -- maybe eight years ago when
14 things were great to put in a Wal-Mart, but not now.
15 Maybe not even three years from now. We do not know
16 what the economy is going to be. Nobody has got a
17 crystal ball, so some say it's going to turn around the
18 end of this year or two years. Let me tell you, I don't
19 know if you're going to be surprised and see it actually
20 turn around. You're going to see lots more people
21 losing their homes, lots of small businesses that are
22 failing. And I just -- I'm just here emotionally,
23 because I'm really trying to help these tenants stay in
24 their stores. Because once they're vacant, it's very,
25 very difficult to find a tenant. And there's other

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1 vacancies around town here now. And, I mean, I have
2 been talking to people around the country to find
3 tenants to fill some of our vacancies, and it's getting
4 impossible.

5 So we have a nice little area over there, but
6 it needs help. And I don't see anyone saying, hey,
7 let's dress up the street of Cherokee Plaza. Let's make
8 it beautified, let's do things like that. You're
9 abandoning all these small businesses. And you're a
10 planner. You are all planners. And you got to think of
11 the whole city, not just one little area, instead of
12 bringing a big blight to the area.

13 I don't know what else I can tell you. But as
14 you can see, I'm not for you people approving a Wal-Mart
15 and that permit. Thank you.

16 CHAIRMAN KISER: Thank you. I got a question
17 for you, Mr. Finberg.

18 MR. FINBERG: I'm sorry?

19 CHAIRMAN KISER: A question for you, sir.

20 COMMISSIONER KIRSTEN: Mr. Finberg, you know,
21 I guess I can't really disagree with you in one regard,
22 and that is that, certainly, the east side could use
23 some help. I'm sure that you are aware that Measure W
24 was, by some measure, an attempt to help improve the
25 east side and other parts of the community.

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1 I just -- I have a quick question for you. Do
2 you feel -- there's a proposed Costco that might
3 eventually occupy a space near Reynolds Ranch. How
4 would you expect that might impact your businesses?
5 Would that -- would that help bring new business or
6 traffic to your part of the city?

7 MR. FINBERG: What I see now is if a person
8 could go one place and buy all the little things they
9 need, including grocery, and liquor, and beer, and do it
10 all in one place, why would they shop anywhere else
11 around Lodi? They'll just go there every day and spend
12 their time, because they can save on gas and don't have
13 to go to many places. It's just like -- it's one place.
14 I can see it. I've seen it happen over in some of the
15 other areas of California. It's just that when you have
16 everything in one place versus -- they're just going to
17 go there and buy everything there and go back home.

18 And so the other stores in the area, the
19 people that have really been giving customer service for
20 years to their customers, you can't get that service
21 from Wal-Mart. Absolutely not.

22 I was reading in the paper this morning where
23 the Consumers Digest did a study of stores in 2006 and
24 just this year, and Wal-Mart was on the bottom of the
25 list of quality, service, cleanliness. And it was in

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1 this morning's paper, the Sacramento Bee. And the top
2 one was Raley's, of course. They were the top up there
3 for being clean and friendly with their people.

4 So you have to get close to people. And you
5 just don't get close at a big store like that. You have
6 to have these small businesses to succeed.

7 COMMISSIONER KIRSTEN: Thank you for your
8 comments.

9 CHAIRMAN KISER: Cheryl Nitschke.

10 MS. NITSCHKE: Good evening. My name is
11 Cheryl Nitschke. I live at 532 Louie Avenue in Lodi.

12 My husband was born and raised here in Lodi, and I have
13 been here almost that many years.

14 Anyway, what I have to say tonight is that a
15 little over seven years ago, Wal-Mart to be built in
16 Lodi was put on a ballot. It was passed. Now we're
17 still fiddle faddling around seven years. I mean, my
18 God, is that supposed to be the Taj Mahal? It took a
19 long time for that one to be built, too.

20 But what I'm really upset about is the delays,
21 over and over and over. There's been so many required
22 things that Wal-Mart has been asked to do. They have
23 complied as far as I can tell. They have even been
24 required to pay money to downtown Lodi because, oh, my,
25 Wal-Mart is going to drive them out of business. I

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1 don't know what for. There's nothing down there that
2 Wal-Mart sells. And I don't know -- I can't remember of
3 another project that has come into this town that has
4 taken this long to be approved, back and forth and back
5 and forth.

6 Yeah. Food-4-Less, as an example. If I
7 remember correctly, when Safeway came in, Food-4-Less
8 was going out of business. They're still there, and
9 they're still complaining about the same thing.
10 Wal-Mart is not and will not be a grocery store. They
11 have multiple things. They have more clothing, more
12 hardware stuff, more other things than they do
13 groceries.

14 I went down to Wal-Mart in Stockton, and I've
15 also been to Food-4-Less. In comparison shopping,
16 Wal-Mart really, when you average out what you could
17 buy, same items, Wal-Mart is not that much cheaper, if
18 they're any cheaper at all. In fact, canned goods,
19 especially at Food-4-Less, are less than what they are
20 at Wal-Mart.

21 Now, where are these other businesses going to
22 come from? My opinion is is that the reputation of
23 Lodi. We're livable, lovable Lodi. Gee, that's going
24 to bring everybody and their brother in. But, no, it's
25 not. But we, as the City of Lodi -- and it's a clean

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1 town. Every -- you know, it's very nice town.

2 In fact, I had new neighbors that came in.
3 They said, oh, gee, I love this street, it's just like
4 Mayberry, USA. And it is. We take pride in our town.
5 And that's how we're going to get other businesses,
6 along with Wal-Mart, as the base on that.

7 CHAIRMAN KISER: You have one minute.

8 MS. NITSCHKE: Okay. Also why -- okay. I
9 guess it's not being -- really going to be approved yet
10 as far as a Costco coming in. Hey, Costco is nice. I
11 like Costco. I shop there. Food-4-Less is going to
12 jump on that one, too. They say no, but that's going to
13 take business away, because the majority of Costco is
14 food.

15 You know, come on. Let's make a decision on
16 this. Let's get it over with. Let's get it done. Let
17 these guys start building, or let them say goodbye,
18 Lodi, see you. Thank you.

19 CHAIRMAN KISER: Thank you. Sean Reilly.

20 MR. REILLY: Sean Reilly, 101 West Locust
21 Street. I have been here for almost two years, and I
22 used to live in Stockton. And, you know, I go there

23 right now, you know, to Super Wal-Mart, because they
24 have more than what we do here. I think it's better
25 to -- for us to have a Super Wal-Mart here so we don't

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1 have to go all the way to Stockton or Eight-Mile Road.
2 I do now know that was in the process, but that's a
3 different story.

4 But the revenue -- I like to take my revenue
5 here in Lodi more than to Stockton. Okay? Stockton is
6 a good town. It's getting big. I like Lodi. It's
7 quiet. You know what, coming in the past, in the past
8 year, have been bad, and I've seen businesses stay in
9 business, you know. You know, Food-4-Less should be
10 worried about if a Costco was going to go in there,
11 because that's where -- you know, where all the food is.
12 But Wal-Mart has more, like, clothing and stuff like
13 that.

14 So I support Super Wal-Mart here, because it
15 will have jobs, revenue will be good, and no one -- you
16 know, I can see it right now that no other businesses
17 will go down and will not go out of business. That's
18 what I have to say.

19 CHAIRMAN KISER: Thank you. Last one, Don
20 Mooney.

21 MR. MOONEY: I had filled out a card, but I
22 already spoke.

23 CHAIRMAN KISER: Okay. All right. Any other
24 people that would like to come up and make a comment?
25 Not seeing any, I'll close it to the public. We'll go

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1 back to the Commission.

2 COMMISSIONER KIRSTEN: Can I have just a
3 moment here to -- for the record, I need to state that I
4 had met with certain parties relevant to tonight's
5 discussion, and they are Chris Podesto with Food-4-Less,
6 and I met with both Steve Herum and Brad Jolley of Herum
7 & Crabtree, and I also met with the applicant, Darryl
8 Browman of Browman Company.

9 CHAIRMAN KISER: I also would like to disclose
10 that I talked to Darryl Browman and I talked with Steve
11 Herum. And I'll just state that for the record.

12 VICE CHAIRMAN CUMMINS: I also spoke with
13 Mr. Browman today as well.

14 COMMISSIONER HENNECKE: I'll just disclose
15 that I talked to Mr. Browman and Mr. Podesto.

16 COMMISSIONER OLSON: And I spoke with
17 Mr. Herum.

18 CHAIRMAN KISER: All right.

19 COMMISSIONER KIRSTEN: I had a couple of
20 questions for staff.

21 CHAIRMAN KISER: Go ahead. Ask your
22 questions.

23 COMMISSIONER KIRSTEN: If this is the time, I
24 have two questions for staff, and I will ask them
25 separately.

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1 At some point, Mr. Mooney brought up the
2 no-project option. And I just wondered, at this stage,
3 is a no-project option within the authority of the
4 Planning Commission?

5 MR. BARTLAM: Under the scenario. Sorry about
6 that. Under the scenario of the environmental document,
7 it's not. That scenario, if you will, was acted on by

the City Council. That having been said, the Commission actually does have discretion of a no-project alternative, if you want to call it that, by not approving the resolution. And so your ability --

COMMISSIONER KIRSTEN: But that's the only form that it would take from the standpoint of tonight's discussion?

MR. BARTLAM: That's right. It's not an environmental decision. It's a decision to not make an affirmative to any one of the numbers of findings before you.

COMMISSIONER KIRSTEN: Then there was another discussion we heard from Mr. Jolley that -- and my question is, do we have the authority at this stage to delay this application, this request, pending a request for an independent economic analysis, new information?

MR. BARTLAM: I would say you have the authority to request additional information as it

pertains to the projects before you: The two use permits, the tentative map, the site plan and architectural review, and any of the findings, including the statements of overriding consideration.

That having been said, I would actually challenge the Commission to decide whether any additional information that might come forward would have bearing on your decision. So if you feel, in the range of opportunities for additional economic information, as an example, would that information have an impact on your decision making. And if it would, ask for it. Whether that will be forthcoming, I can't tell you. But if you just simply are looking for additional information in order to have yet more information, then why bother frankly.

COMMISSIONER KIRSTEN: Let's borrow Mr. Jolley's argument for a moment. And I believe that we heard a range of estimates. From my memory, it's from \$130,000 of additional sales tax revenues all the way to a high of up to \$1.3 million. I would say that, speaking for myself, as -- I find that to be a pretty wide range, and it would help me make a useful decision if I knew in fact that it was \$1.3 million, then I might weigh that more heavily as I consider the statement of overriding consideration.

The same would be true with the employee numbers. You heard the same ranges that I did, 600 to 1,000. If it's 600, then you weigh that differently when you're trying to make -- consider a statement of overriding consideration. Or if it's 1,000, then it -- you know, it has the obvious weight and impact on your decision making.

And so, to me, I might be able to make the argument that if we don't know -- at this point, I personally have heard a lot of estimates. And I'm not sure that I have an independent and accurate analysis, particularly of those two measures, economic measures. And so would you suggest -- would you say then that if we could get a clearer picture of that, it might be a reasonable request on the part of the Commission?

MR. BARTLAM: Yeah. Again, I can't speak for each individual commissioner in terms of what is going through your own minds about what's important and what's

19 not important. The fiscal impacts, plus or minus, may
20 or may not make a difference whatsoever in your decision
21 making. That's all I'm suggesting. If it does, then
22 asking for additional information would be valuable. If
23 it doesn't, then I certainly wouldn't suggest we go out
24 and study yet another realm of possibility when the end
25 result won't make a difference. That's all I'm saying.

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1 MR. HOBBS: There's another consideration, if
2 I could, Planning Commission. Under State law, since
3 the EIR has now been certified, you have a certain
4 amount of time to make a decision on the project. And
5 that time is 50 days, five, zero days, from the date of
6 certification of the EIR to approve or disapprove the
7 map. And that 50 days runs on April 30th of this year.

8 So we don't have a lot of time on that. So
9 you're coming up against some deadlines where you need
10 to make a decision one way or the other. And which
11 decision you make is certainly up to you.

12 The other consideration that you should think
13 about if you're going to ask for additional analyses and
14 studies is what might be gained, sort of building on
15 what Mr. Bartlam is saying. We have some estimates and
16 some ranges here that are given. If we have another
17 analysis done, it's reasonable to assume that you're
18 going to get a third or a fourth set of data sets, of
19 studies, of analyses, and it will probably come within
20 those ranges.

21 And as planning commissioners, you have the
22 authority tonight in deciding on the project, and the
23 discretion to accept whatever sets of evidence has been
24 presented to you so far, and reject those that you don't
25 find credible and persuasive. So you have that

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1 authority.

2 And the fiscal analysis is not necessarily a
3 CEQA related issue anyways. The tax benefits that may
4 be gained from it is certainly a consideration that you
5 can take into account, but that doesn't necessarily have
6 a physical, environmental impact.

7 COMMISSIONER KIRSTEN: If -- kind of borrow
8 for a minute that we chose that path. How -- what would
9 be -- logistically, I have knowledge that the time frame
10 may prohibit this being done in time to achieve that
11 objective, but if we -- if we were to do that, what
12 would be the logistics on how we would obtain
13 independent information, from what body would it come
14 from, and how would that be paid for?

15 MR. BARTLAM: It's a good question. So let's
16 play that scenario out. First, let's assume that the
17 majority of the commission so chooses to direct the
18 additional information. Your action then would be to
19 continue the actions tonight.

20 I frankly would fully expect to see an appeal
21 of that decision to the City Council, which would be
22 perfectly appropriate for the proponents to do. So if
23 you take the scenario, branching off on the appeals
24 basis, we would then schedule that appeal to the City
25 Council, the City Council would weigh in on whether that

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1 additional information is valuable or not, and then you
2 would branch off on a yes or a no to -- whether, indeed,
3 they would direct staff to go do additional study.

If they did, we would follow, frankly, the same process that we do to hire any other consultant. We would put together a request for proposal, we would send out that request to a variety of economic consultants that exist within Northern California, and then weigh what we felt was the most responsive proposal. That proposal would then go to the City Council for approval, and we would then hire the consultant.

The consultant would then take however much time they felt necessary to undertake the work. That work would be ultimately paid for by the applicant, much like the Environmental Impact Report. And I appreciate Mr. Jolley's concern about the legitimacy of Bay Area Economics, but Wal-Mart didn't hire them. The City of Lodi hired them. And so if the best proposal was yet another economic firm that somehow did business with Wal-Mart down the road, we would be back, frankly, right before you.

So, at any rate, there's obviously some concern about impartiality. And it's not a piece of work that City staff is going to do for the Commission.

It's a piece of work that's going to come from some outside body.

So let's assume that we've now hired and we've received a report, it's paid for through our contracting system by the applicant, Mr. Browman, and then we schedule the Planning Commission back to a meeting much like tonight --

COMMISSIONER HENNECKE: So, in essence, the BAE report was commissioned by the City and is an impartial third party report?

MR. BARTLAM: Yeah. Bay Area Economics was retained by the City. It was not a decision to hire Bay Area Economics by Wal-Mart, much like the environmental consultant, PMC. PMC was hired by the City. That process took place back in, I want to say, 2001 or 2002 when we initially got the application for the project. The original economic consultant was retained by the City.

And so, again, what's impartial, who is impartial, what information you get, to a certain degree, anybody will tell you anything as long as you're paying them. And I would argue Dr. King, the consultant of choice for Mr. Jolley, has the same cloud of credibility that anybody that Mr. Jolley would bring forth as well.

CHAIRMAN KISER: Is there -- just like -- the question that I had though was that, CB Richard Ellis, that was hired by Wal-Mart.

MR. BARTLAM: They were hired by Wal-Mart.

CHAIRMAN KISER: Those are conflicting numbers with what the other ones have. That's why I have the question, because --

MR. BARTLAM: I can tell you that every economic report that's been submitted to the City, whether it be a firm hired by the City, a firm representing Mr. Jolley, or a firm representing Wal-Mart Stores, every one of those reports suggests a different number. And I think as Mr. Hobbs has suggested to you, we can certainly go out and do yet another study. And I

15 would -- I would lay odds that that study is going to
16 come up with yet a different set of numbers.

17 CHAIRMAN KISER: Is there a possibility of
18 getting someone that hasn't done a report for either one
19 of -- the proponent or opponent?

20 MR. BARTLAM: Perhaps.

21 CHAIRMAN KISER: And just the City pick that
22 person and --

23 MR. BARTLAM: Perhaps.

24 CHAIRMAN KISER: -- take that report?

25 MR. BARTLAM: But, again, I won't know that

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1 until I've gone through the process to find out who is
2 out there that might be standing that hasn't been,
3 quote, unquote, clouded by the applicant or the
4 Opposition.

5 COMMISSIONER HENNECKE: It doesn't matter who
6 you hire. It's all going to be conjecture on forecasts
7 and how you slice and dice statistics. So you can get
8 reports until the cows come home and get a different
9 answer every time.

10 VICE CHAIRMAN CUMMINS: I would agree with
11 Commissioner Hennecke. We have more than enough data
12 before us. We have statistics coming out of our ears.
13 We've all taken college stats. We know how these things
14 go. And I think we have more than enough economic data
15 information for us to make a decision tonight.

16 CHAIRMAN KISER: Well, I don't feel that I
17 could make a decision on those impacts. Regarding --

18 VICE CHAIRMAN CUMMINS: How many more studies
19 do we need? Do we need one more? But what if you don't
20 like those numbers?

21 CHAIRMAN KISER: I want to know that we've
22 done the right thing. And in my mind, I'm not
23 comfortable with it right now.

24 VICE CHAIRMAN CUMMINS: Okay.

25 CHAIRMAN KISER: I feel that the -- again, I

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1 want to know if they're hiring 600 people, because -- I
2 mean, there's got to be something that's going to be a
3 lot closer. When you got -- I don't care -- I know you
4 can get there, but there's something that's going to
5 be --

6 MR. BARTLAM: Let's talk about that a bit
7 more. I think you can come pretty close -- in fact, I
8 mean, I think we've got the data telling you pretty
9 close what the potential sales and the number of
10 employees from the project will be.

11 That's really not the point of contention.
12 The point of contention is how much loss of jobs or
13 sales from other projects are you going to attribute to
14 the project. And that is really where you're going
15 to -- you're going to take what is at best a crystal
16 ball, particularly in this economic climate, and then
17 cover it with a blanket and decide how many -- what's
18 the percentage of loss of sales, if any, from
19 Food-4-Less, and what does that mean in terms of the
20 number of jobs.

21 All I'm suggesting is you're not asking for
22 what are the gross dollars and gross employee gains as a
23 result of the project. That's simple. It's in your
24 record. Give me five minutes, and I'll tell you what
25 those numbers are. That's not where the argument is.

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1 The argument is, what is the net impact? In other
2 words, how many sales, if any, are going to be lost from
3 other stores, and how many people as a result are going
4 to lose their jobs as a result.

5 And I got to tell you, I think you're going to
6 get another set of numbers, and somebody will call those
7 numbers into question. And, again, I challenge you to
8 be definitive about whether that is going to result --
9 that information, whatever it is, is going to result in
10 a decision different than what you're sitting at --
11 looking at with the volume of text that you've already
12 seen. And if it is, then make a motion, and we'll see
13 where the rest of the Commission sits.

14 COMMISSIONER HENNECKE: I don't think that
15 would be easy anyway with the economic climate, because
16 we're not looking at a static target. It's forever
17 moving and volatile. So I don't see how anybody is
18 going to analyze and come up with something concrete.

19 MR. BARTLAM: Again, you have full discretion
20 over whether you agree or disagree with the
21 environmental findings before you. I think Mr. Mooney
22 or Mr. Jolley, whichever one said it, took the comments
23 in the staff report out of context.

24 Your slimming discretion relates specifically
25 to the findings relative to the use permit, tentative

0111

1 map, and site plan and architectural review. That is
2 where you have little discretion, and that is what the
3 staff report says. I'm telling you here tonight, the
4 Commission can accept or reject any of those
5 environmental findings. You can -- you can ask for
6 additional information, if you think that's necessary.
7 You can strike the entire piece of statement of
8 overriding consideration having to do with jobs and
9 revenue, and still have a valid statement of overriding
10 consideration. Take it out of the equation completely,
11 if you want. You don't have to accept any of that.

12 VICE CHAIRMAN CUMMINS: I have one more
13 question for the staff. When we get ready to actually
14 vote on something, do we have to take each of these four
15 or five items individually, or can we lump the use
16 permit, sale of alcoholic beverages, tentative map, et
17 cetera, together? How do we do this?

18 MR. BARTLAM: You can take it as one motion,
19 or you can split it up and take each of those actions
20 separately. We have provided a resolution that gives
21 you one motion to approve or deny the whole thing.

22 VICE CHAIRMAN CUMMINS: The whole thing.

23 CHAIRMAN KISER: Any other questions?

24 MR. BROWMAN: Mr. Chairman, could I say one
25 thing? Would that be possible?

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1 CHAIRMAN KISER: It's closed to the public
2 right now.

3 COMMISSIONER KIRSTEN: I think you have a --

4 CHAIRMAN KISER: Do I have to open it back up?

5 MR. BARTLAM: That's completely up to you,
6 Mr. Chairman.

7 CHAIRMAN KISER: Go ahead. I'll open it back
8 up.

9 MR. BROWMAN: Thank you. I just wanted to ask
10 one thing at this point.

11 MS. CHADWICK: At the mic, please.
 12 MR. BARTLAM: Excuse me. Can we at least have
 13 him come to the mic so we can have it on record?
 14 MR. BROWMAN: I'm sorry. Thank you very much,
 15 Mr. Chairman and Members of the Council. I appreciate
 16 the opportunity. All I would ask tonight is -- I
 17 respect your discretion whether you approve or deny the
 18 project. I would just ask for a decision. This has
 19 been going on for eight years. And with all due
 20 respect, I would -- if you don't believe the information
 21 is there to approve the project, or for some reason you
 22 don't, I would just ask that you make that decision.
 23 There's been so much information that's been provided.
 24 At some point, I would hope that fairness and just
 25 getting a decision, whatever it may be, I would hope

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1 that you would support the project. But if, for
 2 whatever reason, that wasn't something, I would just ask
 3 for a decision on all of the items that are before you.
 4 If you don't feel there's adequate information to
 5 support the project, I would ask you to deny the project
 6 just so that we can get some definition and resolution.
 7 And -- and, respectfully, that's all I would ask. Thank
 8 you very much.

9 MR. HOBBS: Chair and Members of the
 10 Commission, if I could just add to that a little bit.
 11 That's certainly an option, what the applicant is
 12 suggesting. And if you don't feel you have enough
 13 information tonight, you can certainly deny the project,
 14 and with your comments on the record, or with an express
 15 directive or declaration that the City Council can take
 16 into consideration that you feel that there should have
 17 been or needed to be more studies in order for you to
 18 make a yes vote.

19 COMMISSIONER KIRSTEN: I have a quick
 20 question. Mr. Browman, I think it was Mr. Hobbs that
 21 mentioned that, in all likelihood, if the Planning
 22 Commission was to take the decision tonight to request,
 23 what we call, quote, unquote, an independent economic
 24 analysis so that we can try to sort out the difference
 25 between the ranges we discussed earlier, if the Planning

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1 Commission did that -- I'm not saying that they are --
 2 but if in that case, they mentioned that it would likely
 3 be, you know, contested. And is that your
 4 understanding, that in all likelihood, that the
 5 applicant would contest that decision and ask for appeal
 6 there as well?

7 MR. BROWMAN: Absolutely. I think, from our
 8 standpoint, with all due respect, I respect your
 9 judgment, whatever that judgment would be. I would just
 10 ask, as long as this has been going on, you know, just
 11 treating us fairly would be just to give me a decision,
 12 whether we agree or not.

13 I mean, I have respect for everyone sitting at
 14 that table. But, please, at this point, give me a
 15 decision and let me move on, whether it's yes or no. To
 16 do another study, we'll be back in the same place. What
 17 we've been doing is, you know, we provide data, we
 18 provide practical answers, and then, you know,
 19 Mr. Jolley is a great attorney, so he provides a bunch
 20 of arguments, and then, you know, it creates some
 21 uncertainty. I think the people that are sitting at

22 that table are more than capable of making a decision
23 based on the information. And I would respectfully just
24 ask you to do that. If it's in support of the project,
25 that's wonderful. And if for some reason you don't feel

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1 like there's adequate information for you to support the
2 project, if you would just make the decision and deny
3 the project, at least then I would know where I stand
4 after eight years.

5 COMMISSIONER KIRSTEN: All right. And I
6 just -- personally, I regret that we have this threshold
7 of 50 days or -- I'm sorry. What was it, Mr. Hobbs?

8 MR. HOBBS: It was 50 days from certification
9 of the EIR.

10

11 COMMISSIONER KIRSTEN: And that hardly
12 provides enough time. I swallow hard on this subject,
13 because more information is always good, but to be
14 perfectly fair, in your words, and respectful of your
15 situation, I struggle that you might be exposed to
16 another time lapse that would cause you further delays,
17 costs. So I got to tell you, I'm really respectful and
18 sympathetic to that argument. And so -- I don't speak
19 for the Commission, but that weighs my decision making.

19

MR. BROWMAN: Thank you. Thank you very much.

20

CHAIRMAN KISER: Thank you.

21

22 MR. JOLLEY: Chair Kiser, if you may -- if I
23 may have a moment to respond to those comments. Thank
24 you.

24

25 With respect to the timing, the 50-day issue,
I would submit that that is not an issue for the

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1 Commission at this point. That comes from the
2 Subdivision Map Act. And it says, when an agency
3 certifies an EIR, then the time frame for approval is 50
4 days.

5 The problem is, the term, "certifies an EIR,"
6 includes several components, one of which is the
7 adoption of the mitigation measures, mitigation
8 monitoring and reporting program that you are to do
9 tonight.

10

11 And that comes from a case called Vedanta
12 Society versus California Quartet. And in that case, a
13 planning commission approved an environmental impact
14 before certifying the EIR and approved the project. And
15 that was appealed to the city council. The city council
16 had one member recuse himself and deadlocked 2-2. The
17 council said that this was an appeal of a planning
18 commission approval, that the approval stood, and
19 opponents challenged that. And the appellate court
20 said, no, that is not the case, because you must
21 affirmatively certify the Environmental Impact Report
22 and make the findings before the project can be
23 approved.

23

24 And so I would submit to you that the 50-day
25 time frame for EIR certification doesn't run until those
findings are made, and that's something the Commission

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1 is being asked to do.

2 Aside from that, let's assume that the 50 days
3 does apply. Mr. Bartlam has said he can look at the
4 data and give you some real information on this. The
5 data is there, but maybe the information summary is not.
6 We have conflicting reports. I'm not sure which reports

7 he would look at to get that information. He thinks he
8 can do it in a short period of time. Perhaps the better
9 course for the Commission is to give Mr. Bartlam and his
10 staff the opportunity to do that, and give you his
11 objective analysis in a short period of time, and have
12 him come back to you before that April 30th deadline to
13 give you that information. Thank you.

14 COMMISSIONER KIRSTEN: Well, I would defer to
15 staff --

16 CHAIRMAN KISER: Hold on. Any questions for
17 Mr. Jolley?

18 COMMISSIONER KIRSTEN: None.

19 CHAIRMAN KISER: Closed meeting. Back to
20 staff.

21 MR. BARTLAM: Let me jump on the last part. I
22 think Mr. Hobbs wants to jump on the first part. What I
23 said was the information is in the record relative to
24 the gross numbers, whether that be sales or numbers of
25 employees. The short period of time is take your

0118 1 five-minute break, because it's in the record, and I'll
2 pull it out.

3 What I can't give you in a short period of
4 time, and in fact, I would not even propose to suggest I
5 can provide it, is the cloudy crystal ball about the
6 assumption that somebody will have to make, whether it's
7 another economic consultant or you individually as
8 planning commissioners, of what is the net effect.
9 Because if Mr. Jolley just wants the gross effects, he
10 knows what those are. We can agree, I think, pretty
11 quickly on the number of employees and the gross
12 revenues from the project.

13 What I think everybody from day one with the
14 project has had a hard time getting their arms around is
15 acceptance of what the assumption for store closures,
16 and as a result, what might be the impacts of the
17 project because of that. And that's not something that
18 myself, my staff, or anybody else at the City of Lodi is
19 going to be able to provide for you. They're not going
20 to feel comfortable, because quite honestly, as
21 Mr. Jolley is not an economist, neither am I, and
22 neither is anybody else at the City of Lodi.

23 MR. HOBBS: Commissioner, let me just respond
24 briefly to what Mr. Jolley was speaking about with the
25 certification of the EIR.

0119 1 The City Council has certified the EIR. The
2 EIR has to be certified prior to approval of the
3 project, which is a consideration before you tonight.
4 And under CEQA guideline 15090, what needs to happen for
5 certification of the EIR is that the decision making
6 body, the City Council, has to certify that it was
7 completed in compliance with CEQA, they did that, that
8 the EIR was presented to them, and that they reviewed it
9 and considered the EIR, they did that, and that they
10 affirmed that the EIR reflects their independent
11 judgment. They did that.

12 What my colleague, Mr. Jolley, is referring to
13 are the findings that are made in conjunction with
14 project approval. Those happen tonight, if at all, or
15 if it is appealed to the Council following your
16 decision, may happen at that point. That is separate
17 than the certification of the EIR. The certification of

18 the EIR is just basically a declaration by the City
19 Council that the EIR analyzed all the environmental
20 impacts. It doesn't approve the project, it doesn't do
21 anything towards approval of the project, except certify
22 that that document adequately analyzed all the impacts.

23 The case that my colleague refers to, the
24 Vedanta case, I'm very familiar with that case. It's
25 actually different from what he's suggesting. In that

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1 situation, what happened was there was a planning
2 commission decision that was appealed to the city
3 council. It went to the city council and hung up on a
4 2-2 vote, which the city council determined was an
5 approval, an approval by, basically, a tied vote.

6 What the court said in that case is that you
7 can't, at the appeal level, city council level, approve
8 a project by, basically, inaction, which is what a tie
9 was. You have to have an affirmative majority vote
10 affirming the findings and making specific findings.
11 That's a different consideration than what's before you
12 tonight. The case doesn't have application to what's
13 before you.

14 The 50 days comes out of the Subdivision Map
15 Act. And it says that following certification of the
16 EIR, the legislative body considering the map, which is
17 the Planning Commission here, has 50 days to act on it.
18 You don't have to approve it, but you have to act on it.

19 MR. BARTLAM: And, mind you, we're talking
20 about one of the actions before you. So in a, let's
21 call it, a potential worst-case scenario, the Commission
22 doesn't act within the 50 days, the tentative map would
23 be approved by inaction. So in the scheme of things,
24 they don't have a project, they don't have an ability to
25 construct. You need the use permit approval and the

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1 site plan architectural review approval for that.
2 There's a separate clock ticking for that action. It's
3 180 days from the council's certification. What they
4 would have is a tentative map, which is nothing more
5 than an ability to then work towards filing the final
6 map, subdivide the property into 12 blocks.

7 I don't want to make more of the 50 days than
8 it is, but in the worst-case scenario, if you think
9 about it from the ability for the City to consider it
10 appropriately, you end up subdividing the property by
11 the inability for the Commission to take action. The
12 project, the use permits, the site plan and
13 architectural review, that clock ticking is 180 days.
14 And, frankly, if I have to go back, hire a consultant,
15 go through the typical process, we're going to bump up
16 against that time frame.

17 COMMISSIONER HENNECKE: Mr. Chair, if I would,
18 I would like to maybe make a recommendation that we take
19 a ten-minute break, and maybe you can work your
20 five-minute magic, and pull out two numbers, and maybe
21 that would appease some of my fellow commissioners.
22 More numbers for them to throw in their number basket to
23 mix them around and see how they like them.

24 COMMISSIONER OLSON: I don't need that.

25 CHAIRMAN KISER: Okay.

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1 VICE CHAIRMAN CUMMINS: Mr. Chairman, I would
2 like to make a motion that the Planning Commission

3 approve the use permit file number U-02-12 to allow the
4 construction of a commercial shopping center in a C-S
5 zone and allow the sale of alcoholic beverages at the
6 Wal-Mart Supercenter; that we approve the tentative
7 parcel map, 03-P-001, to create 12 parcels for the
8 project relating to the Lodi Shopping Center; that we
9 also approve the architectural approval for the new
10 commercial buildings to be constructed at 2640 West
11 Kettleman Lane, and making findings that we adopt the
12 statement of overriding consideration pursuant to the
13 California Environmental Quality.

14 COMMISSIONER HENNECKE: I will second that.

15 CHAIRMAN KISER: We have a motion on the floor
16 as to the Browman Development Company and Wal-Mart Real
17 Estate Business Trust to approve use permit U-02-12 to
18 allow the construction of commercial center in a C-S,
19 commercial shopping district, and allow the sale of
20 alcoholic beverages at the Wal-Mart Supercenter; to
21 approve vesting tentative map 03-P-001 to create 12
22 parcels for the project; site plan and architectural
23 approval of a new retail building to be constructed at
24 1600 Westgate Drive. In addition, the Planning
25 Commission will consider adopting and approving the

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1 findings and statements of overriding consideration
2 pursuant to the Environmental Act.

3 We have a first by Commissioner Cummins; a
4 second by Commissioner Hennecke. All those in favor?

5 COMMISSIONER HENNECKE: Aye.

6 VICE CHAIRMAN CUMMINS: Aye.

7 COMMISSIONER OLSON: Aye.

8 CHAIRMAN KISER: Opposed?

9 COMMISSIONER KIRSTEN: Aye.

10 CHAIRMAN KISER: Aye.

11 COMMISSIONER HEINITZ: Aye.

12 MR. BARTLAM: Could I get a voice vote? I'm
13 not able to read the lips. If the ayes could either
14 raise their hand, or we can go across and do it.

15 MR. HOBBS: Let's do it audibly so we have a
16 record.

17 COMMISSIONER HENNECKE: Approved. Aye.

18 VICE CHAIRMAN CUMMINS: Aye.

19 COMMISSIONER OLSON: Approved.

20 CHAIRMAN KISER: Nay.

21 COMMISSIONER KIRSTEN: No.

22 COMMISSIONER HEINITZ: No.

23 COMMISSIONER OLSON: Approved.

24 MS. CHADWICK: Okay. I missed that.

25 MR. BARTLAM: What was your vote, Mr. Heinitz?

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1 COMMISSIONER HEINITZ: No.

2 MR. BARTLAM: Oh, good. We have a tie vote.

3 VICE CHAIRMAN CUMMINS: I'm going to comment

4 as follows --

5 MR. BARTLAM: Tied votes are denied. You have
6 to have an affirmative action for the project to move
7 forward. 3-3 is, in effect, a denial.

8 COMMISSIONER KIRSTEN: All right. I believe
9 that concludes the matter, correct?

10 CHAIRMAN KISER: Yes. We have just issued a
11 denial.

12 MR. BARTLAM: That's correct.

13 CHAIRMAN KISER: Okay. Comments by the

public? Comments by the Planning Commission and staff?
MR. BARTLAM: I have no comments, Mr. Chair.
CHAIRMAN KISER: None? Then I adjourn the
meeting.
(The proceedings concluded at 9:00 p.m.)

REPORTER'S CERTIFICATION

I, Mandy M. Medina, Certified Shorthand Reporter,
in and for the State of California, do hereby certify:

That the foregoing was taken before me at the
time and place herein set forth; that the testimony
and proceedings were reported stenographically by me
and later transcribed into typewriting under my
direction; that the foregoing is a true record of the
testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name
this 5th day of May, 2009.

Mandy M. Medina, CSR No. 11649

**LODI
PLANNING COMMISSION
Staff Report**

MEETING DATE: April 8, 2009

APPLICATION NO: Use Permit U-02-12,
Vesting Tentative Map 03-P-001
Site Plan and Architectural Review 08-SP-08

REQUEST: The request of Browman Development Company to allow construction of the Lodi Shopping Center and allow all subsequent development approvals for the center. Specifically, to approve Use Permit U-02-12 to allow the construction of a commercial center in a C-S, Commercial Shopping District, and allow the sale of alcoholic beverages at the Wal-Mart Supercenter and Vesting Tentative Map 03-P-001 to create 12 parcels for the project. Finally, to approve the SPARC application concerning the Wal-Mart building.

LOCATION: 2640 West Kettleman Lane. Approximately 40 acres located at the southwest corner of west Kettleman Lane/State Route 12 and Lower Sacramento Road in west Lodi.

APPLICANT: Browman Development Company
100 Swan Way, Suite 206
Oakland, CA 94621

PROPERTY OWNER: Browman Development Company & Wal-Mart Real Estate
100 Swan Way, Suite 206 Business Trust
Oakland, CA 94621 Mail Stop 0555
Bentonville, AR 72716-0555

RECOMMENDATION: Staff recommends that the Planning Commission approve the Use Permit, Vesting Tentative Map, and SPARC requests subject to the conditions listed in the Draft Resolution as attached.

PROJECT/AREA DESCRIPTION

General Plan Designation: NCC, Neighborhood/ Community Commercial.

Zoning Designation: C-S, Commercial Shopping District.

Property Size: Approximately 40 acres, 36 acres for the shopping center development and 4 acres adjacent and southwest of the shopping center site for construction of a stormwater detention drain.

Adjacent General Plan, Zoning and Land Use:

North (across W. Kettleman Ln): General Plan; NCC, Neighborhood Community Commercial
Zoning; C-S, Commercial Shopping Center
Land Use; The Vintner's Square Shopping Center anchored by the Lowe's Home Improvement store

South: General Plan; LDR, Low Density Residential
Zoning; PD, Planned Development
Land Use; Currently Agricultural planted as a vineyard, but planned as the Southwest Gateway planned residential community

West: General Plan; PQP, Public/Quasi Public & HDR, High Density Residential
Zoning; PUB, Public & PD, Planned Development
Land Use; Currently agricultural, but planned for a utility substation and higher density residential as part of the Southwest Gateway planned residential community

East (across Lower Sacramento Rd.): General Plan; NCC, Neighborhood Community Commercial
Zoning; C-S, Commercial Shopping Center
Land Use; The Sunwest Plaza Shopping Center currently anchored by the existing Wal-Mart, J.C. Penny and the Food 4 Less Grocery Store.

BACKGROUND:

March 11, 2009, the Lodi City Council certified the Final Revised Environmental Impact Report (FREIR) for the Lodi Shopping Center project. The action took place as a result of two appeals that were filed concerning the Planning Commission's decision to not certify the document at their October 8, 2008 meeting. At that October meeting, the balance of the requests that have been submitted were tabled in order for final action on the environmental document to take place. With the Council action, those requests are now back before the Commission for consideration.

PROJECT DESCRIPTION:

Use Permit and Tentative Map Analysis:

Approximately 18 years ago, the City's General Plan designated the southwest corner of West Kettleman Lane/State Route 12 and Lower Sacramento Road for the construction of large-scale retail development. Since that time, the centers on the other three corners have built out as envisioned. Major national retailers such as Wal-Mart, J.C. Penney, Target, and Lowe's have occupied these corners. The Lodi Shopping Center is proposed on the remaining fourth corner to be anchored by a Wal-Mart Supercenter. This type and scale of development is consistent with the activity that has occurred at the other three corners.

The City's Zoning Code requires that all plot plans for projects within the C-S, Commercial Shopping District receive Planning Commission approval. Over time, this review has been done through the Use Permit process. The Zoning Code also requires Use Permit approval for the sale of alcoholic beverages. The applicant is requesting a Use Permit and a Vesting Tentative Map in order to divide the property into 12 lots that will correspond to the number of buildings anticipated for the project.

The proposed project includes the construction of approximately 339,966 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 12 buildings of varying sizes. The primary use will be a Wal-Mart Supercenter which will occupy approximately 226,868 square feet of floor area, including approximately 70,000 square feet for grocery sales, 19,889 square feet for a garden center (including outdoor fenced area), and 6,437 square feet for an auto service shop. The Wal-Mart

Supercenter will not include the use of outdoor metal storage containers, and will not include a seasonal sales area in the parking lot.

A moderate sized retailer will occupy approximately 35,000 square feet on pad 12 in the southeast corner of the site. The remaining 11 buildings will range in size from 3,200 square feet to 14,788 square feet. Three of the 11 buildings will be occupied by fast food franchises, with another two buildings consisting of sit-down restaurants, and the remaining buildings occupied by such retail uses such as financial services/bank, professional/business services, and other retail sales and services.

The uses, layout and design of the shopping center has remained the same as that presented to and approved by the Planning Commission in December, 2004. The Wal-Mart building is located at the southwestern corner of the site, with 11 freestanding buildings located along Kettleman Lane and Lower Sacramento Road to the north and east. In the center of the shopping center is the main parking lot. The proposed vesting tentative map includes the Wal-Mart store and all corresponding parking in the largest lot (lot 12, 18.3 acres), with each of the remaining 11 buildings on their own lot with associated parking. These other lots are generally one+/- acre in size, with the smallest (lot 8) being 0.53 AC and the largest (lot 11) being 2.6 AC. Internal travel lanes, parking medians and planters are located through-out the interior. Access to the Center is mainly from Westgate Drive and Lower Sacramento Road, with right turn in and out only from Kettleman Lane. As shown on the site plan, significant public improvements are required in order to build this project, as detailed in the draft conditions in the accompanying resolution of approval. The applicant will be responsible for the construction of Westgate Drive from Kettleman Lane to the southerly project boundary as well as the frontage improvements on Kettleman Lane and Lower Sacramento Road. The applicant is also responsible for the approximately four acre site across Westgate Drive to be used for storm water detention, all associated project right-of-way dedications, utility easements, engineering reports and studies, and fees. An encroachment permit from CalTrans for Kettleman Lane / State Route 12 will be needed.

Conditions in the draft Resolution cover fire safety, outdoor storage or display of merchandise, shopping cart storage, security and exterior lighting. Consistent with the prior approval by the City Council, conditions relative to re-use of the existing Wal-Mart building are also included. Further, even though a CEQA environmental impact as to urban decay or physical deterioration from the Lodi Shopping Center cannot be made, the Planning Commission can make a decision that the economic effects of the Center on the Downtown should be addressed. To this end, staff is proposing a condition to require the Lodi Shopping Center to invest in the Downtown area. The aggregate value of the capital improvement must exceed \$700,000. Finally, a condition is included to incorporate all mitigation measures as specified in the certified FREIR.

The Use Permit will allow the sale of alcoholic beverages, for the Supercenter's use. No Use Permit for alcohol for any of the freestanding buildings has been applied for or is under consideration. The tenants of these freestanding buildings are not known to staff and have not been included in this request. Any such request in the future would require a Planning Commission Hearing at that time when the specific details of the requesting business are known. The Planning Commission has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart Supercenter. As such, staff is recommending that the Planning Commission approve the request to sell alcohol.

The second Use Permit request emanates from the C-S zoning designation which specifically states that a "detailed plot plan of the proposed construction" be submitted to the Planning Commission. The design standards identified in the code are as follows:

- A. The site shall be designed and used as a unit, regardless of ownership of the land and buildings.
- B. All streets bordering the site shall be fully dedicated and improved by the developer.
- C. The design of the development shall include the landscaping of buildings and parking areas, the screening of nearby residential areas, and the enclosure or shielding of trash and disposal areas. Lights and signs shall be located to avoid disturbance to residential areas.
- D. Driveways, parking areas and loading areas shall be located so as to minimize traffic interference.

It is staffs opinion that the Planning Commission has little discretion regarding this Use Permit. Effectively, Section 17.58 of the Municipal Code adds additional design requirements to the project. These standards were adopted in 2004 specifically to deal with the design of large scale retail establishments like Wal-Mart. The applicant has met or exceeded each of these standards as presented and conditioned. Therefore, staff is recommending that the Planning Commission approve this request.

As previously discussed in the analysis, a vesting tentative map approval is requested to divide the site into 12 lots. The applicant has met the requirements of the City's subdivision ordinance and the State Subdivision Map Act. Staff recommends approval of this action and has included vesting tentative map conditions in the draft resolution.

SPARC Review:

Along with the plot plan and tentative map for the Lodi Shopping Center, preliminary elevations and colors for the Wal-Mart Supercenter have been submitted. No elevations or colors, landscaping plan, signage plan, materials, or other final plans for the rest of the Center or buildings have been submitted. As mentioned, this shopping center is subject to the City's Design Standards for Large Retail Establishments. The overall site layout, building footprints, parking areas, and access driveways provide the overall direction of the Center and were used by staff and the Planning Commission in the December 8, 2004 review to determine that this project complies with the Design Standards for Large Retail Establishments. As such, no further design, layout, or changes have been proposed.

The proposed project includes the construction of a new Wal-Mart Supercenter store with a building size of approximately 226,868 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road. The Wal-Mart Supercenter building is a single story structure. The architectural theme of the building is a contemporary style and uses construction materials commonly used in commercial shopping center construction. Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building. The major materials used for architectural treatment include fawn (brown) colored stucco, fawn (brown) cultured stone veneer, split face (light brown) block, sea-green colored smooth finish metal panels, charcoal roofing material, hallow (gunmetal gray) metal doors and cornices, and black fencing. The body of the building will be in shades of brown. The ground level will have fawn (brown) colored stucco walls with fawn colored stone veneer accent walls near key entrances and along the lower eight feet of the exterior wall. The architectural treatment features are mostly used on the north and east elevation. Also on the main entrance, a canopy type architectural feature is proposed. The proposed main entry canopy will be clad with a brown cultured stone finish.

The west and south elevations do not feature the same detailed architectural treatment. The west (rear) elevation is a continuous wall with little architectural treatment to breakup the elevation of the building. The entire west elevation will have fawn (brown) colored stucco walls with metal doors painted to match the stucco. Cornices and accent trims are provided to break up the wall elevation. The ground level will also have cultured veneer stone elements. The midsection of the western elevation should receive further architectural treatment to add architectural interest to the wall. It is important to note that this elevation will be visible from across Westgate Drive.

The southern elevation will feature nearly identical architectural treatment as the west elevation. However, the proposed southern elevation is less of an issue. First, there will be an 8-foot tall masonry wall on the southern property line to block any view of this elevation from the project to the south. Second, unlike the western elevation, the southern elevation is not a continuous large mass elevation. Because the main axis of the building faces west (the longest elevation), the south elevation is the side of the building and is relatively small in size in comparison. A condition of approval is included in the SPARC Resolution regarding additional architectural treatment for the west elevation.

Circulation and Parking

The site plan indicates six access points to three public streets. There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (HWY 12), and two from Westgate Drive. All three streets will have a raised center median that will restrict turning movements in some degree. The main entrance to the project parking lot is from Lower Sacramento Road and will be located near the middle of the project site. This entrance will have a traffic signal to control traffic flow and will allow both entering and exiting traffic to turn in both directions. The other access points from Lower Sacramento Road will be restricted to right turn in and right turn out movements. The direct driveway entrance from Kettleman Lane (Hwy. 12) will only permit a right-turn in and right-turn out traffic movement. Traffic can also access the shopping center from Kettleman Lane by way of Westgate Drive. This intersection is controlled by an existing traffic signal that will allow both right and left turning movements. The main (northern) access point from Westgate Drive will allow both right and left hand tuning movements. The southern access point will only allow right in, right out movements. Circulation to and from the site is very similar to the Vintners Square Center (Lowes) to the north.

The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed (4.45/1000). A total of 434 parking spaces are required, per City code (General Retail 1/500). The proposed number of parking stalls exceeds the minimum parking requirements.

There are 12 cart corrals proposed to be distributed throughout the parking lot. These cart corrals will be screened in brown CMU wall with wooden frames to provide additional ornamentation.

Landscaping and Signage

The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping of the building. Signage applications and approvals would be done separately, should the project be approved.

PUBLIC HEARING NOTICE:

Legal Notice for the Use Permit and Vesting Tentative Map was published on March 28, 2009 in the Lodi New Sentinel. The item was posted at City Hall and at the City of Lodi Library on March 26, 2009. 62 public hearing notices were sent out through the combination of the U.S. Postal Service and electronic mail which included all property owners of record within a 300-foot radius of the subject property as required by Government Code section 65091(a)3.

CONCLUSION:

Based on the fact that the applicant has met all of the City's requirements for these requests, staff recommends that the Planning Commission approve Use Permit U-02-12, Vesting Tentative Map 03-P-

001and that the Planning Commission approve Site Plan and Architectural Review for the Wal-Mart building 08-SP-08, P.C. 09-____

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Approve with additional/different conditions
- Deny the Use Permit/Tentative Map
- Continue the requests

Respectfully Submitted,



Konradt Bartlam
Community Development Director

ATTACHMENTS:

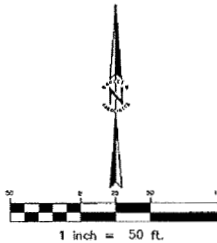
1. Vicinity Map
2. Site Plan
3. Vesting Tentative Map
4. Wal-Mart Elevation and Hardscape Plan
5. Draft P.C. Resolutions; PC 09-____
6. City Council Resolution 2009-27
7. Comment Letters

Vicinity Map



SITE NOTES

- AREA STRIPED WITH 4" SYS. AT 45° 2'-0" O.C.
- ACCESSIBLE RAMP, SEE DETAIL 9 ON SHEET C-8.3.
- PEDESTRIAN CROSSING SIGN W14-2 AND W14-7b TYPICAL AT PEDESTRIAN CROSSINGS AS NOTED ON PLANS. SEE DETAIL 2 ON SHEET C-8.3.
- "YIELD" PAINTED YELLOW ON PAVEMENT TYPICAL. SEE DETAIL 5 ON SHEET C-8.1.
- ENHANCED PAVEMENT AREA. SEE ARCHITECTURAL PLANS FOR DETAILS.
- EXT. PORCH, SEE ARCHITECTURAL PLANS FOR EXACT SIZE, LOCATION FOR STOPS, STAIRS AND/OR RAMPS THAT MAY BE REQUIRED. RAMP PAVEMENT FLUSH WITH THE TOP OF STAIR.
- 4" PIPE BOLLARD TYPICAL UNLESS NOTED OTHERWISE. SEE DETAIL 2 ON SHEET C-8.7.
- CART CROSSING SIGN, SEE DETAIL 1 ON SHEET C-8.7 AND DETAIL 10 ON SHEET C-8.2.
- 4" WIDE x 112' LONG YELLOW PAINTED TRUCK ALIGNMENT STRIPES.
- CONCRETE COMPACTOR PAD, REFER TO ARCHITECTURAL PLAN FOR EXACT LOCATION AND SLOPE.
- ACCESSIBLE PARKING SPACE TYPICAL. SEE DETAIL SHEET FOR ACCESSIBLE PARKING SPACE SIZE, SIGN AND SYMBOL ("VAN" INDICATES VAN ACCESSIBLE SPACE). SEE DETAIL 3 ON SHEET C-8.1 & DETAIL 9 ON SHEET C-8.2.
- CONCRETE TRANSFORMER PAD, CONTRACTOR TO COORDINATE WITH LOCAL POWER COMPANY FOR DETAILS.
- PLACE STOP SIGN & PAINT STOP BAR & "STOP" PER DETAIL 6 ON SHEET C-8.1 AND DETAIL 1 ON SHEET C-8.2.
- PEDESTRIAN CROSSWALK, EDGE LINES PAINTED 8" WITH INSIDE STRIPES PAINTED 4" AT 2'-0" O.C. PERPENDICULAR TO EDGE LINES. SEE DETAIL 7 ON SHEET C-8.1.
- CART CORRAL, SEE DETAIL 5 ON SHEET C-8.7.
- A.D.A. SITE ENTRANCE SIGN, SEE DETAIL 5 ON SHEET C-8.2.
- 4" PAINTED YELLOW STRIPES AT 2'-0" O.C. (TYP.) PERPENDICULAR TO PARKING SPACE. SEE DETAIL 8 ON SHEET C-8.2 (TYP.)
- 24" CONCRETE CURB AND GUTTER. SEE DETAIL 8 ON SHEET C-8.3.
- TRAFFIC FLOW ARROW, SEE DETAIL 1 SHEET C-8.1
- CONCRETE (TYP.), SEE DETAIL 7 ON SHEET C-8.3.
- MONUMENT SIGN (SEE ARCHITECTURAL PLANS).
- ALSK INDICATOR SIGNS (TYP.), SEE DETAILS 9 & 11 ON SHEET C-8.2.
- CART CROSSING WITH WALK, SEE DETAIL 1 ON SHEET C-8.7.
- "NO TRUCKS" SIGN, SEE DETAIL 4 ON SHEET C-8.2.
- "TRUCK DRIVE" SIGN, SEE DETAIL 3 ON SHEET C-8.2.
- "RIGHT TURN ONLY" SIGN, SEE DETAIL 12 ON SHEET C-8.2.
- 10'x45' PALLET/BALE STORAGE AREA.
- TRUNCATED DORIES, SEE DETAIL 4 ON SHEET C-8.7.
- SAWNOT EXISTING EDGE OF PAVEMENT TO FORM A SMOOTH UNIFORM LINE. PLACE PROPOSED PAVEMENT AGAINST SAWNOT LINE & MATCH EXISTING GRADE.
- AT GRADE OVERHEAD DOOR LOCATION, SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION FOR COORDINATION WITH CIVIL PLANS.
- PLACE GREASE/OIL INTERCEPTORS, SEE ARCHITECTURAL PLANS FOR EXACT SIZE AND LOCATION.
- SEE DETAIL 11 ON SHEET C-8.1 FOR TYPICAL PARKING STALL STRIPING DETAIL.
- SEE DETAIL 5 ON SHEET C-8.1 FOR TYPICAL PARKING STALL STRIPING DETAIL.
- TRANSFORMER PAD, SEE ARCHITECTURAL PLANS FOR EXACT LOCATION.
- * ALL PARKING LANDSCAPE ISLANDS RADIUS ARE 10' & 3', UNLESS OTHERWISE STATED ON SITE PLAN.
- INSTALL PARKING LOT LIGHTS, SEE DETAIL 6, SHEET C-8.7.
- INSTALL PARKING LOT LIGHTS, SEE DETAIL 6, SHEET C-8.7.



SITE DATA

PROPOSED PARKING INFORMATION:

TOTAL PROPOSED PARKING SPACES: 216,710

STANDARD SPACES: 832

ACCESSIBLE SPACES: 21

TRANSFORMER PAD: 12

TOTAL PROPOSED PARKING: 846 SPACES

PARKING RATIO: 4.42/1000

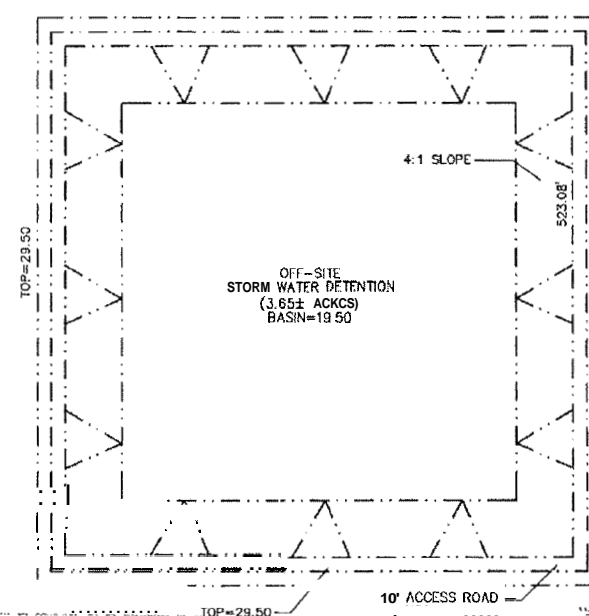
PARKING SPACES COUNT (TYP.): 15

PROPERTY LINE BOUNDARY

HEAVY DUTY ASPHALT

HEAVY DUTY CONCRETE

STANDARD DUTY ASPHALT



WESTGATE DRIVE

C-195-SGR-OR
WAL-MART
18.29 ACRES
CRAB DOCKS - USE L SHAPE TLE
216,710 SF



LOWER SACRAMENTO ROAD

WALMART

SUPERCENTER #1789-03
KETTLEMAN LANE, HWY. 12
LODI, CA
SITE/HORIZONTAL PLAN

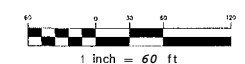
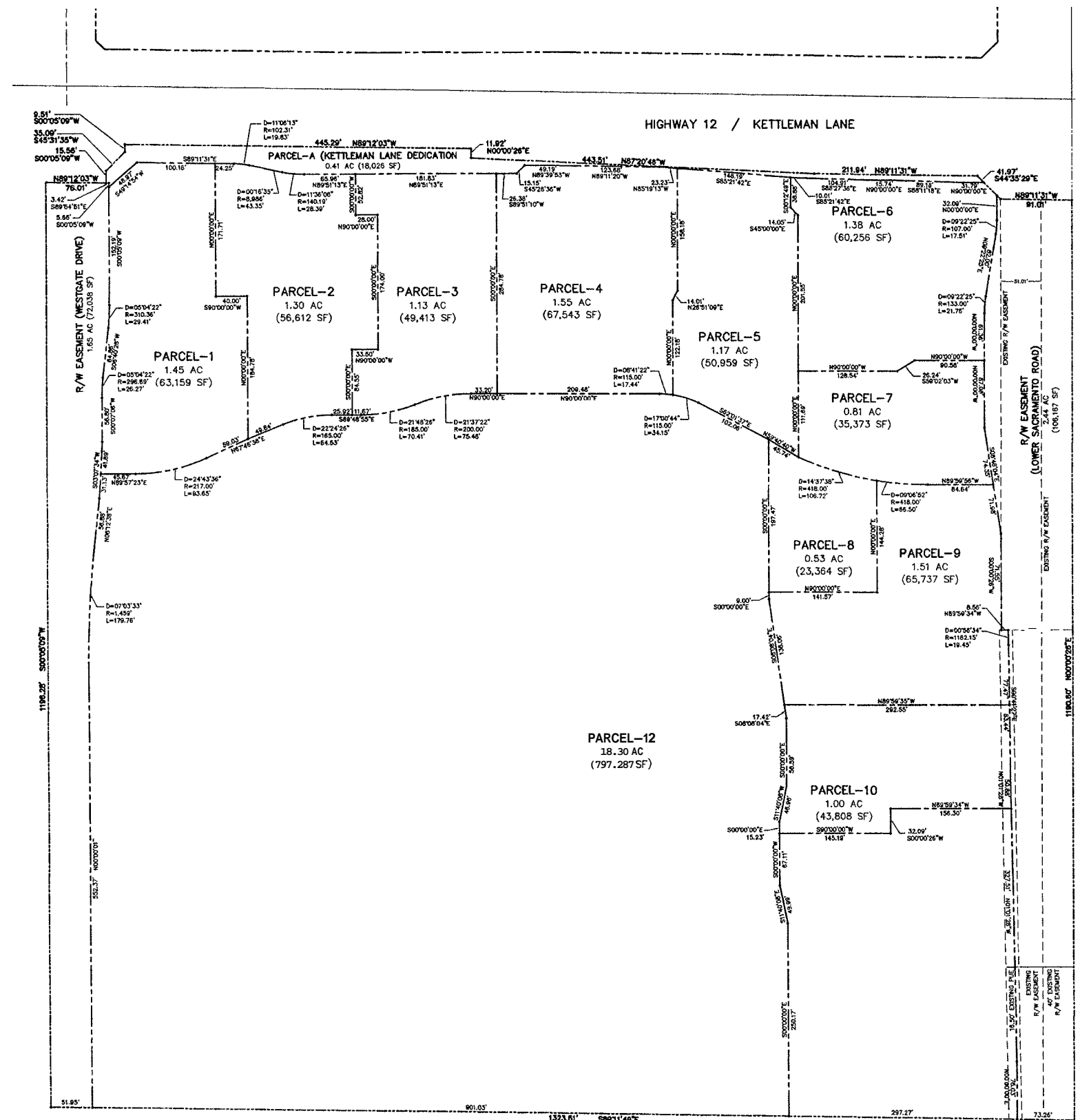
NO.	REVISION	DATE	DRAWN	APPROVED

Scale: 1" = 50'
Designed by: JF/CV
Drawn by: JF/CV
Reviewed by: RW
Date: Dec. 13, 2004

SHEET
C-2.1
OF 34

Project No: 001-272

DA Doucet & Associates, Inc.
330 Douglas Boulevard, Suite 425, Kettleman, CA 98601
Phone: (509) 786-3005 Fax: (509) 786-3070
www.doucet.com
Aurora, IN Northampton, MA



Vesting Tentative Map
Lot Layout
for
Lodi - III
APNs: 058-030-01 & 058-030-02
County of San Joaquin, California
August 15, 2008
Sheet 2 of 2



DA Doucet & Associates, Inc.
1025 Creekside Ridge Drive, Suite 175
Roseville, CA 95678-1936, Phone: (916) 780-2005 Fax: (916) 780-2015
www.doucetandassociates.com



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

Elevations

Project No:	NCA WME-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucius Design	
Checked By:	PLR	
DC:	WAP	

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WAL*MART
Lodi, California
Store No. 1789-03



Project No:	NCAWMT-02-0206
Scale:	Reference Details
Issue Date:	December 7, 2004
Prepared By:	Lucy Davis Design PJR
Checked By:	WAP
Notes:	<p>No drawing or other use of this drawing without the express prior written consent of WAPDC, Inc. is strictly prohibited and any such use without shall be subject to legal action. © WAPDC, Inc.</p>

Perspective 1
View Looking Northwest



WAL★MART
Lodi, California
Store No. 1789-03



william parish
design development
consultants, inc.
1000 lakes drive, suite 405
west covina, ca 91790
t. 626.917.6800
w. www.wpdcc.com

Lodi, California
Store No. 1789-03

WAL*MART



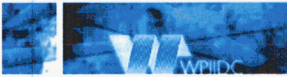


Perspective 3
View Looking Southwest

		REVISIONS
Project No:	NCAWME-02-0206	
Call:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucious Design	
Checked By:	PLR	
DC:	WAP	

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WAL★MART
Lodi, California
Store No. 1789-03



william parrish
design development
consultants, inc.
1000 lakes drive, suite 405
west covina, ca 91790
p. 626.917.6000
f. 626.917.6008
w. www.wp2dc.com



Project No:	NCA WME-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucatus Design	
Checked By:	PLR	
SDC:	WAP	

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Store No. 1789-03



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p. 626-917-6800
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w. www.wp2dc.com



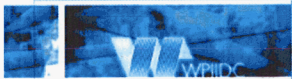
Perspective 6

view Looking Southeast

Project No:	NCA WMT-02-0206	REVISIONS
Scale:	Reference Details	
Issue Date:	December 7, 2004	
Prepared By:	Lucitus Design	
Checked By:	PLR	
ADC:	WAP	

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WAL★MART
Lodi, California
Store No. 1789-03



william parrish
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p. 626.917.6800
f. 626.917.6800
w. www.wpddc.com

KETTLEMAN ROAD HIGHWAY 12



SUGGESTED PLANT LIST

TREES:	COUNT
SEQUOIA SEMPERVIRENS 'BOQUEL'	97
COAST REDWOOD	
LIRIODENDRON TULIPIFERA	26
TULIP TREE	
PIRUS CALLERYANA 'ARISTOCRAT'	73
FLOWERING PEAR TREE	
am	66
LASERSTROMIA 'TUSCARORA' AND MUNKPOSE	57
GRAPE MYRTLE	
FRAXINUS 'RAYWOOD'	40
RAYWOOD ASH	
PLATANUS 'RACEMOSA BLOODGOOD'	
BYCAMORE	
MALUS 'PRAREFIRE'	3
CRABAPPLE	
PODOCARPUS 'GRACILIOR'	5
FERN PINE	
ALL 15 GALLON SIZE TOTAL COUNT:	478

SHRUBS AND ACCENTS:

- PITTOSPORUM 'TOBIRA VARSATA'
- VARIGATED TOBIRA
- LIGUSTRUM JAPONICUM 'TEXANUM'
- JAPANESE PRIVET
- RHAPHIOLEPS 'JACK EVANS'
- PINK INDIA HAWTHORNE
- RHAPHIOLEPS 'CLARA'
- WHITE INDIA HAWTHORNE
- PLUMBAGO AURICULATA
- CAPE PLUMBAGO
- PRUNUS 'CAROLINIANA COMPACTA'
- DWARF CAROLINA LAUREL CHERRY
- ESCALLONIA 'TERR'
- DWARF ESCALLONIA
- BUNUS JAPONICA 'GREEN BEAUTY'
- JAPANESE BOXWOOD
- PHOTNIA 'FRASER'
- RED PHOTNIA
- PHORHUM 'TENAX RUBRUM'
- RED FLAX
- DIETES 'BICOLOR'
- YELLOW BUTTERFLY RS
- PHORHUM 'TENAX PINK STRIPE'
- PINK STRIPE FLAX FLAX
- ASAPANTHUS 'AFRICANUS WHITE'
- LILY OF THE NILE
- HIMEROCALLIS 'YELLOW EVERGREEN'
- DAYLILY

GROUND COVERS:

- COPROBMA 'KIKI'
- PROSTRATE COPROBMA
- TRACHELOSPERMUM 'JASMINODES'
- STAR JASMINE
- GAZANIA 'MITSUWA YELLOW'
- YELLOW GAZANIA
- LANTANA 'PURPLE'
- 800 LAWN

NOTE THAT THIS PLAN IS CONCEPTUAL IN NATURE, NOT ALL SHRUBS OR PLANTING MAY BE SHOWN, TREES SPECIES AND COUNT IS REPRESENTATIVE OF WHAT WILL BE SHOWN ON THE CONSTRUCTION DOCUMENTS. ALL PLANTERS SHALL BE PLANTED WITH GROUND COVERS OR SHRUBBERY GROUPINGS. ALL PLANTERS ARE TO BE MULCHED WITH A 2" LAYER OF BARK MULCH. THE IRRIGATION SYSTEM SHALL BE AN AUTOMATIC UNDERGROUND TYPE USING LOW VOLUME, MULTI-OUTLET DRIP BUBBLERS WITH 1/4" TUBING TO EACH INDIVIDUAL PLANT, OR IN-LINE DRIP TUBING AND POPUP, LOW VOLUME SPRAY HEADS. ALL LANDSCAPING SHALL BE IN COMPLIANCE WITH THE CITY OF LODI'S WATER USE LANDSCAPING GUIDELINES.

SITE PLAN

SCALE: 1" = 60' - 0"

JAMES FERGUSON CLABAUGH ARCHITECT 45% SHAWN LAM VACAVILLE, CA 95688 PHONE/FAX: 707-449-3916

These drawings are the instrument of the service and shall not be used, in part or in whole, for any work not specifically contracted with James Clabaugh Landscape Architect. Copyright © 2004

LODI SHOPPING CENTER LOWER SACRAMENTO ROAD AND KETTLEMAN ROAD LODI, CALIFORNIA

Scale	1" = 60'	REVISIONS
Date	7/15/05	No. Date
Job No.		
Designed by	J.C.	
Drawn by	J.C.	

PRELIMINARY LANDSCAPE PLAN

Sheet No. PL-1 of 1

Comment Letters

LAW OFFICES OF DONALD B. MOONEY
RECEIVED

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95626
Telephone (530) 758-2377
Facsimile (530) 758-7169
dbmooney@den.org

2009 JAN -6 PM 1:06

CITY CLERK
CITY OF LODI

January 6, 2008

VIA FACSLMILE (209-333-6807)
AND FEDERAL EXPRESSRandi Johl, City Clerk
Lodi City Council
221 W. Pine Street
Lodi, California 95240

<input checked="" type="checkbox"/> CC	<input type="checkbox"/> HR
<input checked="" type="checkbox"/> CM	<input type="checkbox"/> IS
<input checked="" type="checkbox"/> CA	<input type="checkbox"/> LIB
<input checked="" type="checkbox"/> CD	<input type="checkbox"/> PR
<input type="checkbox"/> EUD	<input type="checkbox"/> PD
<input type="checkbox"/> FIN	<input type="checkbox"/> PW
<input type="checkbox"/> FD	<input type="checkbox"/> COM

Re: **NOTICE TO CURE AND CORRECT VIOLATION OF THE RALPH M. BROWN ACT PURSUANT TO GOVERNMENT CODE SECTION 54960.1**

Dear Ms. Johl and Members of the City Council:

This office represents the Citizens for Open Government. **This** letter is to call **your** attention to violations of the Ralph M. Brown Act, which occurred during the Lodi City Council ("Council") meeting on December 10, 2008.

The violation occurred with respect to the Council's **action** on the following agenda item:

- B.1 Public Hearing to Consider the **Appeals of** Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify **the** Final Environmental Impact Report Regarding the Lodi Shopping Center Project Located at 2640 West Kettleman Lane (CD)

The action **of** the Council to grant the appeal **and** certify the Final Environmental **Impact Report** ("EIR") for the Lodi Shopping Center was not in compliance **with** the Brown **Act** for **the** following reasons:

1. The meeting **was** not open as required by Government **Code** section 54953. **An** open meeting **is** not one where the only **choice** to attend **is** to sit in near freezing temperatures for **2** and **half** hours, particularly when the City **could** have easily postponed the meeting in order meet in a facility capable of providing seating for **all** concerned. These facts also establish **a** violation of section 54954.3(a) by unreasonably interfering with the **public's** right to comment on the agenda **item**.

2. In order to ensure attendance, members of the public had to fill out speaker cards in violation of Government Code section **54953.3**, which prohibits the placement of **conditions** of identification on meeting attendance.

Ms. Randi Johl
January 6, 2009
Page 2

3. By providing the new and unprecedented comment and meeting procedures in advance to only some entities, the rules for public comment were not fair in violation of Government Code section 54954.3(b). In addition, the selection of the 4 p.m. time to submit speaker/attendance cards appears calculated to favor the paid Wal-Mart employees who packed the room to the exclusion of other interests - i.e., those opponents of the project would have had to leave work without pay in order to ensure admittance to the meeting,

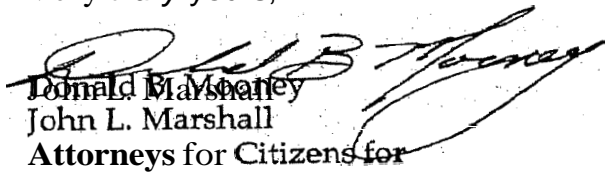
4. In violation of Government Code section 54956, the agenda for the December 10 special meeting lists the starting time of the meeting incorrectly as 6:30 p.m. The meeting effectively started at 4:00 p.m. for members of the public when they were required to submit speaker/attendance cards in order to ensure their attendance.

Pursuant to the Government Code section 54960.1, we demand that the Lodi City Council cure and correct the illegally taken action as follows:

1. The formal and explicit withdrawal and nullification of the action taken on Agenda Item B.1 at the December 10, 2008 meeting.

As provided by section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform this office of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave our client with no recourse but to seek a judicial invalidation of the challenged action pursuant to section 54960.1, in which case we would seek the award of court costs and reasonable attorney fees pursuant to section 54960.5.

Very truly yours,


Donald B. Mooney
John L. Marshall
Attorneys for Citizens for
Open Government

cc: Ann Cerney

Concerned resident
Carolyn Williams
408 Cherry St.
Lodi, Calif 95240

Super cuts in street of
low income place to shop
then are places on Cherokee
Ave to rent for medium
places like that. Or go to
smaller stores for better
business that you can
profit at.

No houses turned into
businesses or garages

no car repairs in resid-
ential area.

Bars off any business of
any kind. Windows clean-
ed so you can see through
and it improves your
business.

Parking areas must not
be dirt, they have to be
covered with gravel, or asphalt

New paper stands are set
out during opened hours
of your business.

Page II

City to clean streets at least once a month & report work on each block (trees, trimming)
Report to go out to each residents in American & Mexican language (Spain)

City to recommend that in each block in residential zone to report to city if they see any damage or theft on the block. Letter to go out to each resident in Lodi.

People to report to City if they have no family and need help in or around their home for Community Service for and to pay off fines.

Churches in area w/ no parks have donated, and find a company to donate basket ball, to let the older play in summer, and winter time. To put hoop-scotch on the driving areas for the younger people.

Kari Chadwick

From: Mark Anaforian [mjanaforian@sbcglobal.net]
Sent: Friday, December 12, 2008 1:28 PM
To: Kari Chadwick
Subject: Wal Mart project

Miss Chadwick,

I'm e-mailing this to you in the hopes you can forward this to the members of the planning commission. I could not find the needed information on the cities website (but than again it is Friday, so who knows).

Dear Lodi City Planning Commission,

I am writing this to urge you to vote "no" on the proposed Wal Mart project. I know this may be a little premature but there is no time like the present. After attending the city council meeting on the 10th, and standing outside in the cold for 4 hours, I was very disappointed with some of the council members. This has less to do with there votes than in their condescending attitude. Thirty minutes into the meeting I knew the vote would be 3-2 and some members seemed annoyed to be there.

But enough of that. My main argument against the proposed Wal Mart is the effect on other businesses in town. A Super Wal Mart not only offers groceries, but tire service, pharmacy, garden, fast food and other items and services. Do not get me wrong I am all for free enterprise when it makes sense.

From my economics classes at USC I know these facts. To increase your tax base without driving others out of business you need one of these truths to be true.

1. **An** influx of new residents into our city - With the housing market in the shape it's in and banks not giving out construction loan to home buyers as often as they use to, I do not see this being a viable reason.
2. Attracting customers from outside the area - With a Super Wal Mart on Hammer Lane, a now okay ed Wal Mart store in the Spanos development on Eight Mile Road, an approved Wal Mart in Weston Ranch and a Wal Mart coming soon to Galt, I do not see where these outside shoppers are going to come from.
3. People increasing their spending - Personally my family has a budget for groceries for the month that is based on my wife and my income. Unless money falls from the sky we have only so much we can spend on groceries. With unemployment at an all time high, uncertainty in the state and countries economic situation and people worrying about their investments in their retirement accounts, I do not see people spending more money just because a Super Wal Mart opens their doors.

Lodi's tax revenue income is like a pie. It's not getting bigger. Instead Wal Mart is just trying to take a bigger piece of the pie. And if they do, and you think this will not affect other stores you are sadly mistaken. Responsible growth not only means for home building but for business building.

Many towns across the U.S. have fallen for the pitch from Wal Mart and have regretted their decision later. In Nowata, Oklahoma a Wal Mart was opened in 1982 which caused half of the businesses in downtown to close. Then in 1984, they closed that store and one in a nearby town and opened a Super Center 30 miles away. Effectively killing not only the downtown of Nowata, but also the town's tax revenues.

Do not be fooled by the grandiose promises from Wal Mart. They are always over inflated and at times not truthful. I strongly urge you to vote no on the proposed Wal Mart projects when it comes up for the next vote. Thank you for your time,
 Mark Anaforian

Kari Chadwick

Subject: Wal-Mart Wolves

Member(s)
Bill Cummins
Randall Heinitz
Steven Hennecke
Dave Kirsten
Wendel Kiser
Tim Mattheis
Debbie Olson

~~~~~

To our esteemed Planning Commission members:

Do you folks really want to continue being a party to this outside “ambulance chasing” legal and financial support that is being used to hassle Lodi, Tracy, and other communities which run up city costs and become a consuming distraction? I dearly hope not. Enough is enough. Please see below.

Thank you,  
Jim Locke  
511 Willow Glen Drive  
Lodi, CA 95240  
368-9009

~~~~~

To Our Honorable City Council and the Lodi News-Sentinel:

I just read in the Lodi News-Sentinel that Tracy, which approved a Wal-Mart Supercenter last month, has been sued over claims that its impact studies are incomplete and inaccurate. The City was sued by the same law firm that sued Lodi over this project three years ago as well as on other Wal-Mart projects in several different California cities over the past few years.

Interestingly enough, this law firm represented Reynolds Ranch in their dealings with the City, helped them get their approvals quickly and no litigation has been filed. Something is not right here.

I would feel differently if litigation like this was motivated by local residents but that is clearly not the case in Tracy, Lodi or any of the other cities where this law firm has been active. If our Lodi elected officials feel that the studies and work done by City Staff and the consultants they have chosen is sufficient then I am personally offended that an outside law firm would file a suit like this. From what I have heard, this firm appears to go from city to city filing lawsuits like this against Wal-Mart projects as though they know what's best. But they don't know what's best for Lodi.

It should be up to our elected officials and residents to decide and not for outside groups to turn to the courts to stop Council approved projects because they don't like Wal-Mart. They don't live here. We do and I want to have a Supercenter in Lodi.

Jim Locke
511 Willow Glen Drive
Lodi, CA 95240
368-9009

P.S. Note the name of the organization created to play the “front” (representation) like they are local Tracy people. e.g. Tracy First, quite similar to: Lodi First
My, what a coincidence.

12/17/2008

Kari Chadwick

From: James Keller [jim.keller@sbcglobal.net]
Sent: Wednesday, January 07, 2009 1:25 PM
To: Kari Chadwick
Subject: Lodi Supercenter

I might not be able to attend the upcoming meeting on Jan 14th, however, I want you to know that I would like you to vote NO on the final plans for the Supercenter. I was disappointed in the way the City Council failed to reschedule the hearing on WalMart, as it appeared that the WalMart people were advised of the city managers decision, on the day of the meeting to have seat numbers handed out at 4pm. When I arrived at 5:30 for the meeting - thinking I was early - I found out about the seating decision and I was left out in the cold.

Jim Keller
2429 Summerset CT
Lodi, CA 95242

01/07/2009

Kari Chadwick

From: Cinclarke57@aol.com
Sent: Monday, January 12, 2009 8:05 AM
To: Kari Chadwick
Subject: (no subject)

Please consider **my** vote a NO on the Walmart Supercenter
I am not able to attend the meeting.
Glenn Clarke
209-339-8177

New year...new news. Be the first to know what is making headlines.

Kari Chadwick

From: Cinclarke57@aol.com
Sent: Monday, January 12, 2009 8:04 AM
To: Kari Chadwick
Subject: (no subject)

I am unable to attend the meeting on January 14 but would like to voice my vote "NO" on the Walmart Supercenter
Thank you,
Cindy Clarke
209-339-8177

New year...new news. Be the first to know what is making headlines.

Kari Chadwick

From: russell young [young5084@sbcglobal.net]

Sent: Saturday, January 10, 2009 10:24 PM

To: Kari Chadwick

Subject: Walmart Supercenter

To Planning Commission members.

My wife and I wish to let you know that we are in favor of having the Walinart Supercenter built in the proposed Shopping Center as the council voted for. We have been going to the Walmart in Stockton, but we would like our tax dollars keep in Lodi. Thank you for taking the time to read our vote.

Mr & Mrs Russell Young
303 Cork Oak Way

01/12/2009

Kari Chadwick

From: Harry Stafford [teebagx2@hotmail.com]
Sent: Monday, January 12, 2009 1:34 PM
To: Kari Chadwick
Subject: Anti WalMart flyer

Planning Commission,

Herewith is rebuttal to a flyer delivered to my door:

Wal Mart should NOT be required to fund a full time Lodi PD officer to the Supercenter parking lot unless every holder of a Lodi business license is required to do so.

Wal Mart has the right to determine its store hours and delivery truck hours without oversight by any entity, governmental or otherwise.

Wal Mart should NOT be required to fund a Lodi Code Enforcement Officer when local businesses close after the Supercenter opens. Operating any business is a risk that owners willingly take in order to provide a service and hopefully make a profit. Competition is the essence of our Capitalistic system and must remain so.

I am not necessarily pro Wal Mart but the anti WM who delivered the flyers are biased against the company to the extreme.

Harry I. Stafford
2405 Saint Moritz Drive
Lodi, CA 95242

Windows Live™ Hotmail®: Chat. Store. Share. Do more with mail. Check it out.

01/12/2009

Planning Commission
City of Lodi
P.O. Box

1-13-09

I am writing to have my vote
heard regarding final plans for
Lodi Supercenter. My vote
is NO!

Please notify the City Council
of my vote as mentioned above.

Thank you

RECEIVED

JAN 13 2009

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

James D Libert
821 Dianna Dr
Lodi, Cal
368-6026

Jan. 13, 2009

RECEIVED

JAN 13 2009

COMMUNITY DEVELOPMENT DEPT
CITY OF LODI

To the Planning Commission of Lodi.

My name is Betty Libert, and I am 75 years old; & been a voter a long time. I do not want a Super Walmart built, here in Lodi. So please vote no for me. It'll be terrible for us people here to have a Super Walmart like that as the traffic is already bad, and that will only make it worse. There will be so much congestion & probably many accidents also. You'll have to build a bigger Hiway also. That will cost us residents, who are trying to survive the ever increasing electric bills going up - our last month bill was \$88.80 for electric - water was \$40.28, waste water was 27.74 & solid waste was 21.94 to total \$178.76 for 2 people. What are you all trying to do to us - run us out of Lodi? Plus the electric bill in the paper said there'll be another increase of 4.64 added to Jan. Bill. What can you do about that? Its high time that the big spenders get off the City Council if that's what they are going to keep doing to us in the future. Now, I've said my piece.

No I am writing them to disregard. P.S Please make a Copy of this for the City Council too. Sincerely with Honesty, Betty Libert
Could you make a Copy of this for the City Council too. P.S. I've lived here most of my life. Betty Libert

Kari Chadwick

From: Betty Peters [cutekitties@att.net]
Sent: Friday, March 27, 2009 6:11 PM
To: Kari Chadwick
Subject: Super Walmart

K. Chadwick:

Please consider this as my vote in favor of the new Super Walmart. I am so tired of going in circles over this matter, can't we just approve this and get it done. The current Walmart is too small, the aisles are too small especially for disabled people in carts. They put the clothes racks close together because there isn't enough room. Plus, with the economy, we need a cheaper groceiy store and Lodi needs the tax dollars.

Thank You,

Betty Peters

03/30/2009

Kari Chadwick

From: Mark Watkins [watkins.mark@yahoo.com]

Sent: Friday, March 27, 2009 6:58 PM

To: Kari Chadwick

Subject: Enough is enough

Vote yes on the Super Walmart and end that ugly comer.

Later, Mark

03/30/2009

Kari Chadwick

From: Ted McBrayer [tedmcbrayer@yahoo.com]

Sent: Saturday, March 28, 2009 6:27 AM

To: Kari Chadwick

Subject: WALMART SUPERCENTER IN LODI!!!!

We will be unable to attend the meeting on April 8th, but do want our voices to be heard!!
WE WANT A SUPERWALMART IN LODI!!!!!! We never shop at the small business because they are too expensive and we are on a fixed income. In these hard times the senior citizen needs a **WALMART SUPERCENTER** more than ever. The small shops have been out for a long time. Just look at Lodi now ...2 car dealerships are gone not to mention all the other businesses gone. To keep money not being spend in Stockton you need to approve this **SUPERWALMART OR DON'T COMPLAIN ABOUT LOST REVENUES TO ME!!!!**

Sincerely,

Ted and Lynda McBrayer
6 Robin Court
Lodi, CA 95242

03/30/2009

Kari Chadwick

From: Bob & Jackie [bjhealy@att.net]
Sent: Saturday, March 28, 2009 1:48 PM
To: Kari Chadwick
Subject: Walmart Super Center

I am a concerned Lodi citizen who is in favor of putting in a Walmart Super Center at the corner of Kettleman and Lower Sac. I do not believe this will hurt the Mom & Pop stores in Lodi as folks who shop there will continue to shop there. They are loyal clientele who shop there for reasons other than price. I do not believe it will hurt Safeway or Raley's for the same reason. However, I do believe it will benefit the citizens of Lodi who are cost/value conscious. As you know, many, many, many items are more expensive at other stores when compared to Walmart. I could give you many examples, but I think it would better if you did some comparison shopping for yourself. Although a Super Walmart may not generate a lot more sales tax dollars than the current Walmart, as a community, we need all the additional revenue we can get. A Super Walmart will also create some additional jobs here in Lodi. In a nutshell, I support a Super Walmart at the corner of Kettleman and Lower Sac. Jackie Healy, Concerned Lodi Citizen

Kari Chadwick

From: shirleymikeburns@comcast.net
Sent: Sunday, March 29, 2009 10:45 AM
To: Kari Chadwick
Subject: Super Walmart

March 29,

2009

Dear Planning commissioner,

I support the Super Walmart Center. We have waited long enough. Please vote "Yes" on it now.

Thank you.

Shirley J. Burns
111 Applewood Dr.
Lodi, CA 95242
(209)369-4643

03/30/2009

27 March 2009

RECEIVED

MAR 30 2009

COMMUNITY DEVELOPMENT DEPT.
CITY OF LODI

Community Development Director
P.O. Box 3006
Lodi, CA 95241-1910

RE: Walmart Super Center

Gentlemen:

This is regarding an email I received today from Kari Chadwick, regarding the above topic,

Since my husband and I will not be able to attend the meeting on April 8, 2009, we would like to express our thoughts and opinions on this subject by means of this letter.

It appears to us that this delay has been going on way too long. What is the problem with Walmart building a Super Center on the outskirts of Lodi? We feel it will not only be a big convenience for many people, but will also provide employment, which is greatly needed in this economic downturn. The traffic issue has already been taken care of and there is plenty of land on which to build and provide parking for the store.

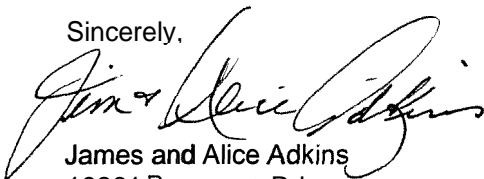
Of course the large stores – namely Safeway's, Food 4 Less, and even Lowes - are going to take issue with Walmart; but if Walmart can provide a quality product for less cost, then we see that as competition, not unfair business tactics. The construction of this establishment will enable many unemployed construction workers to earn a living, plus older people to have shot at a job when it is completed. Walmart is also a place that a person who has limited education can find gainful employment with benefits. Perhaps we can get some of the locals off of Welfare and unemployment benefits by allowing Walmart to build their store and get on with business.

We do not feel this is going to jeopardize the "downtown" businesses, as most of the people who shop at Walmart can't afford to shop at the shops downtown. Besides someone has messed up the parking so badly downtown, I personally can't shop there as I have a hip problem which doesn't allow me to walk any distance. The trees have a much better parking spot than most customers (just my personal opinion, sorry).

Please make it possible for Walmart to continue with their Super Center and get this issue put to rest. I am sure you all have better and more important issues that need dealing with than this one.

Thank you for allowing me to express ~~my~~ thoughts and opinions.

Sincerely,



James and Alice Adkins
19261 Perryman Rd.
Lodi, CA 95242

Kari Chadwick

From: craig diederich [craig.diederich05@gmail.com]

Sent: Monday, March 30, 2009 10:39 AM

To: Kari Chadwick

Subject: lodi shopping center, walmart supercenter

To whom it may concern:

My name is Craig, my wife Kris. I would like to encourage you to support the supercenter. Kris is handicapped and we like to shop the supercenter in stockton. The problem is there is never any handicapped parking available unless we want to wait 20 minutes or more for someone to come out. There is also never a drivey cart. I feel that if the Current Walrnart moves to a new Supercenter, We will have the parking, the everyday low prices, and the convience.

Thanks

Craig A Diederich

Kris L. Diederich

03/30/2009

Kari Chadwick

From: Jerry & Shirley Schmierer [evencouple@sbcglobal.net]

Sent: Monday, March 30, 2009 1:02 PM

To: Kari Chadwick

Subject: super walmart

I am mailing our support for our new super walmart. IT IS TIME!!!!!!! Please, please, please support this on April 8th at the meeting. Joanne Mounce is RIGHT!!! Listen to the people of Lodi....We voted this in once and some small influential group (ha) who knows, sold us out with their big attorney. What's that about???? Save us the gas driving to Stockton to shop superwalmart. Please be our voice. You know who needs to hear the support from the people of Lodi....Thanking you in advance...

Shirley Schmierer

646 N. Loma Dr.

Lodi, CA 95242

2093398603

Lodi residents since 1977. We are seniors and need the savings

Kari Chadwick

From: Robert Davis [bobbetty1271@sbcglobal.net]

Sent: Monday, March 30, 2009 9:21 PM

To: Kari Chadwick

Subject: We want the Wal-Mart Super Center in Lodi

We want the Wal-Mart Super Center in Lodi
Bob & Betty Davis

03/31/2009

Kari Chadwick

From: Mark Washburn [markswashburn@gmail.com]
Sent: Tuesday, March 31, 2009 10:23 AM
To: Kari Chadwick
Subject: Wal-Mart Super Center

Dear Ms. Chadwick,

Thank you for all you and your colleagues in the City of Lodi do to keep the city functioning.

Please let the members of the Commission know that as much as we appreciate their role and function looking out for us as a city, it is time to approve the Wal-Mart Super Center. As Mr. Johnson said at the last City Council Meeting, "If this were Costco or anyone else it would already be approved."

Wal-Mart will employ hundreds of additional people at a time when our area needs jobs. Also, their prices are excellent and a Super Center has many items we can't get anywhere else in Lodi for a comparable price.

Again, thanks to you and the other members of the Commission for your dedication and thank you for listening.

Blessings!!

Mark and Beth Washburn

03/31/2009

Kari Chadwick

Subject: Wall Mart Super Store

From: louisereiswig@sbcglobal.net [mailto:louisereiswig@sbcglobal.net]
Sent: Saturday, March 21, 2009 11:07 AM
To: City Council
Cc: louisereiswig@sbcglobal.net
Subject: Wall Mart Super Store

I am firmly against building a Super Wallmart Store. There are plenty of grocery stores, pharmacies, fast food restraunts, meat markets, and the list goes on and on. We do need dining and dancing places, there is absolutely no decent places for singles of all ages to attend. For those of us older singles, as a widow, I would never go into a bar. But it would be nice to have a place to have a nice meal or just go dancing. We have all kinds of stores in which I feel would be hurt by building a huge store such as this. Personally, I buy most of my groceries at Safeway or Apple market. Lakewood Sausage on Ham Lane and Salisbury Meats are the best as far as a good quality of meat is concerned. Our Lodi is and always has been known as a small town community. We have already lost two nice dress shops and are forced to go to Lincoln Center, Macy's and Dillard's to buy clothing and better cosmetics. Why do we need a huge market that has everything, I very seldom shop at Wall Mart on Kettleman. Please don't make it harder on other stores that would be hurt from this! Thank you. Louise Reiswig

Kari Chadwick

From: Ken/Gail Gruszie [kengo123@softcom.net]

Sent: Wednesday, April 01, 2009 11:25 AM

To: Kari Chadwick

Subject: Wal-Mart

Get us a super WalMart

04/01/2009

Public Affairs & Government Relations

Aaron J. Rios

Senior Manager Public Affairs &
Government Relations

P.O. Box 750
Bryn Mawr, CA 92318
Phone 909.799.1853
Cell 559.274.8461
Fax 909.799.1876
www.walmartstores.com
www.walmartfacts.com

March 10, 2009

Via Email

Honorable Larry Hansen
Mayor
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Walmart Supercenter Tax Impacts

Dear Mayor Hansen and Honorable City Council members,

On behalf of Walmart Stores, Inc., I am pleased to provide you with the attached economic study recently completed by CB Richard Ellis. This study was conducted to determine the impact of the proposed Lodi Shopping Center, including the proposed Walmart Supercenter, on the City of Lodi's General Fund revenues. Walmart decided to undertake this study to respond to specific questions raised by some Planning Commissioners and City Council members, among others, about what the net gain is projected to be upon tax revenues specifically in the City of Lodi.

All data used in the CBRE study was based on figures' in the Urban Decay Analysis prepared by Bay Area Economics (BAE) as part of the Environmental Impact Report (EIR) for the Lodi Shopping Center and not internal projected sales figures. The study's key conclusions include:

- The new Walmart is estimated to generate \$1.08 million in sales tax revenue per year in 2005 dollars (see footnote 1)
- The other stores in the Lodi Shopping Center are estimated to generate \$308,000 in sales tax revenue per year in 2005 dollars
- Including business and property taxes, the new tax revenue per year for the Lodi Shopping center is estimated to be \$1.491 million in 2007 dollars
- The existing Walmart store generates \$548,000 in sales tax revenue to the City, and retenanting of the old Walmart is anticipated to generate \$421,000 in sales tax revenue

¹ . The BAE report used 2005 dollars. As a result, many figures in the report are in 2005 dollars except where scaled using the Consumer Price Index to 2007 dollars.

- The Lodi Shopping Center should result in an increase of \$1.364 million ($\$1.491 - (\$.548) + \$.421 = \1.364) in 2007 dollars
- The reduction in sales tax revenue from other stores in Lodi as a result of the Lodi Shopping Center is \$550,000 (Note: This figure is based on the BAE economic report and is extremely conservative and therefore potentially very high because the BAE market area was defined to include stores outside of the City of Lodi.)
- Using this conservative figure, the total net increase in sales tax revenue alone to the City is \$814,000.
- **Once gains in property taxes and business license taxes are accounted for, and tax losses due to diverted sales are included, the net incremental tax gain for the City of Lodi is \$1,000,169.**

Our team looks forward to answering any questions you may have about this report or any other issue at the March 11, 2009, hearing. I also want to take this opportunity to reiterate Walmart's previous statements concerning the procedures used at the December 10, 2008, hearing. I wanted to make abundantly clear that Walmart did not have any prior knowledge of the ticket distribution system for the December 10, 2008, hearing. City staff did not tell any member of our team that tickets would be distributed for seats inside the chamber, nor did they tell us what time city personnel would begin that distribution. These facts can be easily confirmed with city staff. Also, while we understand the Council's decision to re-hear the certification of the Draft EIR out of an abundance of caution, we do not believe that the procedures used by the city at the December 10, 2008, hearing, caused a Brown Act violation.

Despite the many delays that the Lodi Shopping Center has encountered along the way, Walmart and Browman Development remain committed to building this important project. Both Walmart and Browman Development have been part of the successful fabric of Lodi for many years, and we hope that our mutual commitment to Lodi is self-evident. We believe, and we hope you will agree, that the Lodi Shopping Center will be an asset for the citizens of Lodi for many years to come.

Respectfully,



Aaron J. Rios
Senior Manager Public Affairs & Government Relations
Wal-Mart Stores. Inc.

Attachments

cc: Lodi City Council
Blair King, City Manager
Steve Schwabauer, City Attorney
Radlam Bartlam, Interim Community Development Director

MEMORANDUM

Date: January 12, 2009

To: City of Lodi

From: Elliot R. Stein
Senior Managing Director
CBRE Consulting, Inc.

Re: Proposed Lodi Shopping Center
Sales Tax, Property Tax and Business License Tax Impacts

CBRE Consulting, Inc. was asked to determine the impact of the development of the proposed Lodi Shopping Center ("the Center") on the City of Lodi's General Fund revenues. The Center will be anchored by a 226,868 square foot Wal-Mart Supercenter and an additional 113,098 square feet of other retail space (see Exhibit 1). CBRE Consulting relied upon certain information contained in the Economic Impact Analysis prepared by Bay Area Economics (BAE) in order to conduct this analysis.¹ Specifically, the BAE report was the source of the project description, square footages, and sales per square foot figures used to estimate sales and property tax revenues. In addition, CBRE Consulting obtained from the California Board of Equalization and the City of Lodi's Finance Department information on property tax, sales tax, and business license tax relevant to the City of Lodi. Findings are summarized below and presented in greater detail in the attached exhibits.

Sales Tax Generated by the Center

According to the California Board of Equalization, the City of Lodi receives 1.0 percent of taxable retail sales generated by businesses within the city. Since not all of the sales at the proposed Wal-Mart Supercenter or at the other retail businesses in the Center will be taxable sales (e.g. certain food items, prescription drugs, etc.), CBRE Consulting adjusted total projected sales by removing the non-taxable sales. The adjustments are explained in detail in Exhibit 2. Based on Bay Area Economics' sales estimates which were presented in 2005 dollars, sales tax revenue to the City of Lodi is estimated at \$1,080,700 from the Wal-Mart Supercenter plus an additional \$308,900 from the other stores in the Center, for a total of \$1,389,600/year (in 2005 dollars), assuming stabilized sales. It would be reasonable to escalate these figures to reflect sales in current dollars. However, for the sake of consistency with the BAE analysis, we did not escalate the numbers for this calculation.

¹ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

City of Lodi
 January 12, 2009
 Page 2

Business License Tax

Relying on the schedule of business license taxes provided by the City of Lodi Finance Department, CBRE Consulting estimated the annual taxes that would be payable by Wal-Mart and by the other tenants in the Center. Detailed assumptions are shown in Exhibit 3. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the Center, for a total of \$145,225/year.

Property Tax

Property taxes generated by the Wal-Mart Supercenter will be a function of its assessed value. For the purpose of this analysis, it was assumed that the value will be determined based on the cost approach to value. That is, the sum of direct construction costs plus indirect costs (i.e. fees for architecture, engineering, other consultants, financing, interest, entitlements, permits, insurance, etc.) was used as the basis for calculating real property taxes. Cost estimates from Wal-Mart were used to estimate the potential assessed value of the property (see Exhibit 4). Development costs for the remainder of the Center were not provided to CBRE Consulting; therefore, this estimate of property tax revenue to the City of Lodi is limited to the Wal-Mart store only.

It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused on the net property tax revenue that would result from the development of the Wal-Mart Supercenter. As shown in Exhibit 4, the net property tax generated by the Supercenter is estimated at \$358,630, of which an estimated \$40,920 represents the City of Lodi's share.

Net Increase in Sales Tax

CBRE Consulting was also asked to factor into the analysis of sales tax impact two additional considerations: the loss of sales tax resulting from the closure of the existing Lodi Wal-Mart store; and the new sales tax that could be expected from replacement tenants in the space Wal-Mart will be vacating. That analysis is presented in detail in Exhibit 5. It begins with the estimate of sales tax from the proposed Wal-Mart Supercenter (\$1,389,568 in 2005 dollars). That figure was escalated to 2007 dollars (to \$1,491,241) before adjusting for the closing of the existing Wal-Mart store and the addition of replacement tenants in order to have comparable numbers. The actual change in the Consumer Price Index from 2005 to 2007 was used to adjust to 2007 dollars (see Exhibit 5, footnote 5 for further detail). In summary, the closure of the existing Wal-Mart store would represent a loss of approximately \$548,000 per year in sales tax revenue to the City of Lodi, while replacement tenants generating industry average annual sales of \$350 per square foot would represent an estimated \$421,000 of new sales tax revenue to the City. Overall, the net increase in sales tax is estimated at \$1,364,000 in 2007 dollars, as shown below:

Sales Tax Revenue from Lodi Shopping Center	\$1,491,241
Less: Sales Tax from Existing Lodi Wal-Mart Store	(548,217)
Plus: Sales Tax from Replacement Tenants	<u>421,000</u>
Net Increase in Sales Tax Revenue to the City of Lodi	\$1,364,024

Among its conclusions, Bay Area Economics indicated that: "The net capture of sales from existing retail outlets in 2008 is estimated at approximately \$55 million."² In other words, there may be a diversion of sales from existing retail outlets in the trade area to the new Center, which would result in a decrease in sales tax to the City from those outlets. Because the trade area defined by Bay Area Economics is larger than the City of Lodi (it includes surrounding areas outside the city limits), not all of the \$55 million in diverted sales will impact the City. However, for the purpose of this analysis, it is reasonable to note that since most of the existing trade area retailers are located within the City, one can conservatively estimate that if all of these diverted sales were at the expense of City of Lodi retailers, then the loss of \$55 million in sales would equate to a loss of \$55 million x 1% = \$550,000 in sales tax revenue to the City of Lodi.

Conclusion

The estimated net gain to the City of Lodi from property, sales, and business license taxes is summarized below.

Type of Tax	Total Taxes Generated	Taxes Lost	Incremental Tax Gain
Sales Tax			
Lodi Shopping Center	\$1,491,241		
Existing Lodi Wal-Mart		(\$548,217)	
Replacement Tenants	\$421,000		
Diverted Sales		(\$550,000)	
Property Tax (Wal-Mart only)	\$40,920		
Business License Tax	\$145,225		
Total	\$2,098,386	(\$1,098,217)	\$1,000,169
Sources, CBRE Consulting			

² Ibid, p. 68.

ASSUMPTIONS AND GENERAL LIMITING CONDITIONS

CBRE Consulting, Inc. has made extensive efforts to confirm the accuracy and timeliness of the information contained in this study. Such information was compiled from a variety of sources, including interviews with government officials, review of government documents, and other third parties deemed to be reliable. Although CBRE Consulting, Inc. believes all information in this study is correct, it does not warrant the accuracy of such information and assumes no responsibility for inaccuracies in the information by third parties. We have no responsibility to update this report for events and circumstances occurring after the date of this report. Further, no guarantee is made as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions developed in connection with the study. In turn, these assumptions, and their relation to the projections, were developed using currently available economic data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, actual results achieved during the projection period will likely vary from the projections, and some of the variations may be material to the conclusions of the analysis.

Contractual obligations do not include access to or ownership transfer of any electronic data processing files, programs or models completed directly for or as by-products of this research effort, unless explicitly so agreed as part of the contract.

This report may not be used for any purpose other than that for which it is prepared. Neither all nor any part of the contents of this study shall be disseminated to the public through publication advertising media, public relations, news media, sales media, or any other public means of communication without prior written consent and approval of CBRE Consulting, Inc.

Exhibit 1
Sales Estimate and Distribution
Proposed Lodi Shopping Center
2005 Dollars

Store Characteristic/BOE Retail Category (1)	Square Feet (2)	Sales Per Square Foot (2)	Projected Sales (3)
<u>Proposed Wal-Mart Supercenter</u>			
Square Footage			
General Merchandise	176,313	\$564	\$99,510,918
Grocery	50,555	\$564	\$28,533,202
Total	226,868		\$128,044,120
<u>Other Stores</u>			
Square Footage (1)			
Apparel	8,131	\$300	\$2,439,411
Drug Store	14,788	\$478	\$7,068,664
Eating and Drinking Places	17,190	\$475	\$8,165,250
Other Retail	59,829	\$300	\$17,948,589
Non-Retail Uses	13,160	N/A	N/A
Total	113,098		\$35,621,913
Center Total	339,966		\$163,666,033

Sources: California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) BOE is the State of California Board of Equalization, which collects sales taxes from retailers and provides public tabulations of the occurrence and level of taxable sales in the categories provided.

(2) Square footages and sales for the proposed shopping center provided by Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

(3) Totals may not add due to rounding.

Exhibit 2
City of Lodi General Fund Impacts
Proposed Lodi Shopping Center Sales Tax Revenue
2005 Dollars

Sales Tax Assumptions	Amount
Sales Tax Revenue from Proposed Wal-Mart Supercenter	
Non-Grocery Sales (1)	\$99,510,918
Taxable Grocery Sales (2)	\$8,559,961
Total Taxable Sales	\$108,070,879
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from Wal-Mart	\$1,080,709
Sales Tax Revenue from Other Stores in the Center	
Taxable Drug Store Sales (4)	\$2,332,659
Other Taxable Sales (1)	\$28,553,249
Total Taxable Sales	\$30,885,908
Local Tax Share to General Fund (3)	1.0%
Sales Tax Revenue from the Remaining Center	\$308,859
Total Sales Tax Revenue to the City of Lodi	\$1,389,568

Sources: California State Board of Equalization; and CBRE Consulting

(1) Refer to Exhibit 1.

(2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.

(3) Information obtained from the California Board of Equalization.

(4) It is estimated that only 33.0 percent of drug store sales are taxable.

Exhibit 3

Proposed Lodi Shopping Center Business License Tax Revenue 2008 Dollars

Business License Tax Assumptions (1)	Amount
Business License Tax Revenue from Proposed Wal-Mart	
Total Gross Receipts	\$128,044,120
Tax Rate (1)	\$1.00/\$1,000
Estimated Total Business License Tax for Wal-Mart	\$128,044
Business License Tax Revenue from Other Stores	
Apparel (2)	
Total Gross Receipts Per Store	\$609,900
Tax Per Store	\$210
Estimated Total Business License Tax for 4 Stores	\$840
Drug Store	
Total Gross Receipts	\$7,068,664
Tax Rate	\$.60/\$1,000
Estimated Total Business License Tax	\$4,241
Eating and Drinking Places (3)	
Total Gross Receipts Per Stores, 4 Fast Food	\$1,150,688
Total Gross Receipts Per Store, 2 Sit-Downs	\$1,781,250
Tax Per Store	\$450
Estimated Total Business License Tax	\$2,700
Other Retail (4)	
Total Gross Receipts Per Store	\$900,000
Tax Per Store	\$450
Estimated Total Business License Tax for 20 Stores	\$9,000
Non-Retail Uses (5)	
Total Gross Receipts, 8 Spaces	N/A
Tax Per Business	\$50
Estimated Total Business License Tax	\$400
Total for Other Stores	\$17,181
Total Estimated Business License Tax Revenue from the Center	\$145,225

Sources: City of Lodi Finance Department; and CBRE Consulting.

(1) The City of Lodi Finance Department the Business License Tax Rate for the Retail and Services Group is as follows:

Gross Receipts	Tax or Tax Rate
\$0 to \$200,000	\$50
\$200,001 to \$500,000	\$98
\$500,001 to \$900,000	\$210
\$900,001 to \$3,000,000	\$450
\$3,000,001 to \$10,000,000	\$.60/\$1,000
\$10,000,001 and greater	\$1.00/\$1,000 (no limit)

(2) Gross receipts for Apparel estimated based on 4 stores at 2,033 square feet each.

(3) Gross receipts for Eating and Drinking Places estimated based on 4 Fast Food and 2 Sit-Down restaurants at 2,423 and 3,750 square feet each, respectively.

(4) Gross receipts for Other Retail stores estimated based on 20 stores at 3,000 square feet each.

(5) Gross receipts for Non-Retail spaces conservatively estimated using 8 spaces at the minimum tax rate.

Exhibit 4
City of Lodi General Fund Revenue Impacts
Wal-Mart Supercenter Property Tax Revenue
2008 Dollars

	Amount
Wal-Mart Supercenter	
Total Direct Construction Costs (1)	\$26,800,000
Indirect Cost Estimate (2)	\$7,300,000
Land Cost (3)	N/A
Total Project Costs Excluding Land	\$34,100,000
Total Tax Basis (excluding Land)	\$34,100,000
County Tax Rate (4)	1.0517%
Total Tax to County	\$358,630
City Share of the County Tax Rate (4)	11.41%
Net Property Tax Revenue from Wal-Mart Supercenter (4)	\$40,920

Sources: San Joaquin County Treasurer-Tax Collector; Wal-Mart Stores Inc.; California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) Construction cost estimates provided by Wal-Mart Stores, Inc.

(2) Indirect construction costs estimates provided by Wal-Mart Stores, Inc.

(3) Net property tax revenue reflects tax on only the hard and soft costs of the project, excluding land cost. It is assumed that property tax is already being assessed on the land value; therefore, it is not incremental to this analysis.

(4) Information provided by San Joaquin County Treasurer-Tax Collector.

Exhibit 5
City of Lodi General Fund Impacts
Net Increase in Sales Tax Revenue From Proposed Lodi Shopping Center

Sales Tax Assumptions	Amount	
LODI SHOPPING CENTER		
Sales Tax Revenue from Proposed Wal-Mart Supercenter		
Non-Grocery Sales (1)	\$99,510,918	
Taxable Grocery Sales (2)	\$8,559,961	
Total Taxable Sales	\$108,070,879	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from Wal-Mart	\$1,080,709	
Sales Tax Revenue from Other Stores in the Center		
Taxable Drug Store Sales (4)	\$2,332,659	
Other Taxable Sales (1)	\$28,553,249	
Total Taxable Sales	\$30,885,908	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from the Remaining Center	\$308,859	
Total Sales Tax Revenue to the City of Lodi		
2005 Dollars	\$1,389,568	
2007 Dollars (5)	\$1,491,241	[A]
LESS: EXISTING LODI WAL-MART STORE		
Sales Tax Paid to City of Lodi (2007) (6)	\$548,217	[B]
PLUS: REPLACEMENT TENANTS AT EXISTING LODI WAL-MART STORE		
Taxable Sales (7)	\$42,100,000	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from Replacement Tenants	\$421,000	[C]
NET INCREASE IN SALES TAX REVENUE TO CITY OF LODI [A - B + C]	\$1,364,024	

Sources: California State Board of Equalization; State of California Department of Industrial Relations, Division of Labor Statistics and Research; Wal-Mart Stores, Inc.; and CBRE Consulting.

- (1) Refer to Exhibit 1.
- (2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.
- (3) Information obtained from the California Board of Equalization.
- (4) It is estimated that only 33.0 percent of drug store sales are taxable.
- (5) Escalation based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research; annual CPI changes 3.9 percent from 2005-2006 and 3.29 percent from 2006-2007.
- (6) Information provided by Wal-Mart Stores, Inc.
- (7) This estimate is based on an industry sales per square foot standard of \$350 multiplied by 120,352 square feet.

**COMMENT LETTERS
RECEIVED BY CITY
CLERK'S OFFICE**

Through 5/7/09

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BRIAN J. PLANT
OF COUNSEL

April 7, 2009

VIA ELECTRONIC & REGULAR MAIL

Steve Schwabauer, City Attorney
City of Lodi
221 W. Pine Street
Lodi, CA 95240


Re: Browman Development Company Request –Lodi Shopping Center Project

Dear Mr. Schwabauer:

This letter reconfirms, pursuant to Government Code section 66456.1, that our client, Browman Development Company, will seek multiple final/phased maps for the above referenced project if reapproved by the City. The Vesting Tentative Map Lot Layout for Lodi –III (August 15, 2008), contained within the Planning Commission Agenda packet for April 8, 2009, should therefore continue to be considered in light of this request.

If you have any questions or need anything further from our client please let me know. Thank you.

Very truly yours,


Andrea K. Leisy

Cc: Darryl Browman
Jon Hobbs
Alexis Pelosi

April 8, 2009

Mr. Wendell Kiser
Chairman
and Members of the Planning Commission
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Additional Documentation to Clarify Information Presented at the March 11, 2009
Special Meeting of the Lodi City Council Regarding Tax Revenue Impacts of the
Proposed Lodi Shopping Center

Dear Chairman Kiser and Members of the Planning Commission:

During the public hearing portion of the above referenced Special Meeting, I presented estimates of the sales tax, property tax and business license taxes that would be generated by the proposed Lodi Shopping Center project (the "Project"). My presentation was based on information included in a memorandum to the City of Lodi, prepared by CBRE Consulting, Inc., dated January 12, 2009. A copy of that memorandum is attached. Please note it contains all of the assumptions relied upon to estimate tax revenue to the City from the Project. This letter is intended to briefly summarize our findings and to respond to questions raised by Councilmembers Susan Hitchcock and Joanne Mounce about apparent discrepancies between the CBRE Consulting findings and those presented by other sources.

Summary of Estimated Sales Tax

Our analysis considered four components in order to estimate the net impact of the Project on sales tax revenue to the City of Lodi:

- the gain of sales tax from the new Lodi Shopping Center including the 226,868 SF Wal-Mart Supercenter and an additional 113,098 SF of other stores;
- the loss of sales tax from the closing of the existing Lodi Wal-Mart;
- the gain of sales tax that could be generated by replacement tenants who occupy the existing Wal-Mart store after Wal-Mart vacates the premises; and
- the loss of sales tax resulting from the diversion of sales from existing retail outlets in the trade area (as concluded by Bay Area Economics [BAE] in its report, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," dated October 2007, prepared for the City of Lodi as part of the Project EIR [the "BAE Report"]).

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 2



As explained in the January 12, 2009 memorandum, the net increase in sales tax revenue to the City of Lodi was estimated to be \$814,000 (in 2007 dollars) as shown below.

<i>Sales Tax to the City of Lodi</i>	
Lodi Shopping Center	\$1,491,241
less: Existing Lodi Wal-Mart	(548,217)
plus: Replacement Tenants	421,000
less: Diverted Sales	<u>(550,000)</u>
Total	814,024

The figure shown above for the Lodi Shopping Center breaks down as follows:

	<i>2005 Dollars</i>	<i>2007 Dollars</i>
Wal-Mart Supercenter	\$1,080,709	\$1,159,783
Other Stores	<u>308,859</u>	<u>331,458</u>
Total	\$1,389,568	\$1,491,241

At the Special Meeting, Councilmember Joanne Mounce stated that the CBRE Consulting estimate was inconsistent with a lower figure of \$790,000 which had been previously presented by Wal-Mart. We inquired into this figure and learned that it appeared in an ad by Wal-Mart which stated, in part: "Wal-Mart is one of the top revenue generators in the City of Lodi – in 2006 nearly \$600,000 in local sales tax revenue was generated from the Kettleman Lane store. The average California Supercenter contributes \$790,000 in sales tax, representing a 35.9% increase in Lodi." The difference between the CBRE Consulting estimate and the \$790,000 figure can be explained as follows:

- the \$790,000 is an average for all Wal-Mart Supercenters in California and appears to be presented in 2006 dollars.
- the CBRE Consulting estimate relied upon sales per square foot estimates contained in the BAE Report prepared for the City of Lodi as a part of the EIR. According to the BAE Report, those sales were, "...based on a blend of national Wal-Mart average and estimated sales per square foot for [the] existing store." For the sake of consistency with the economic analysis contained in the EIR, CBRE Consulting used the sales per square foot figures in the BAE Report to calculate estimated sales tax revenues.
- In summary, the \$790,000 figure (in 2006 dollars) is an average annual city sales tax for all California Wal-Mart Supercenters, while the higher figures appearing in the CBRE Consulting analysis reflect specific assumptions about sales per square foot projected in the EIR for the proposed Lodi Wal-Mart Supercenter.

Also at the Special Meeting, Councilmember Susan Hitchcock stated that a report prepared for the City by another economic consultant reached the conclusion that the proposed Project would not generate any new sales tax revenue to the City of Lodi. At Council member

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 3



Hitchcock's request, copies of two reports, both prepared by Applied Development Economics (ADE) in 2004, were provided to us.¹

The two reports are very similar; in fact the July 2004 report draws heavily on the contents of the June 2004 report. We found nothing in the ADE reports to indicate that the Project will not generate any new sales tax revenue to the City. It does conclude, however, "...that the proposed project will take \$36.2 million of sales away from established business assuming that the superstore anchor tenant is relocated from across the street."² The remainder of the Project's demand would come from recapturing sales leakage and from "new sales earned by Proposed Project."³ By comparison, the BAE report used in the EIR prepared for the City was more pessimistic in its estimate of diverted sales (i.e. sales the proposed Project would divert from existing retail outlets in the trade area). BAE concluded that the Project could divert \$55 million in such sales, compared to ADE's lower figure of \$36.2 million. CBRE Consulting relied upon the larger BAE estimate to estimate the downward adjustment that would need to be made to arrive at a net sales tax impact number. Therefore, as shown in the table above and in CBRE Consulting's January 12, 2009 memorandum, \$55 million x 1% = \$550,000 was netted out of the calculation in order to derive the net sales tax impact of the Project on the City. In other words, the assumption used by BAE in the EIR (and by CBRE Consulting) is more conservative than the assumption used by ADE with respect to diverted sales.

A comparison of the 2004 ADE reports and the 2007 BAE Report also reveals a disparity between estimates of total sales for the Project. Both reports use the same square footage figures. However, ADE estimated total Project sales of \$111.5 million while BAE estimated \$163.7 million. The key difference in assumptions is that while ADE assumed Wal-Mart annual sales at \$350 per square foot ("The proposed Wal-Mart Supercenter Store is estimated to earn at least \$350 per SF of sales..."⁴), BAE estimated sales for the proposed Supercenter at \$564 per square foot based on more current information including national sales data for all Wal-Mart stores and estimated sales per square foot for Wal-Mart's existing Lodi store.⁵ For the sake of consistency with the EIR, CBRE Consulting used the BAE estimate of sales in order to calculate sales tax revenue to the City of Lodi.

Summary of Estimated Property Tax

The calculation of estimated property tax is straight-forward. It is based on a cost approach to value which would be used by the county assessor. Development cost estimates provided by Wal-Mart were used to estimate the assessed value of the property. It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused only on the net property

¹ Applied Development Economics, "Economic Impacts of the Proposed Lodi Shopping Center On Downtown Lodi," June 2004; and "Socio-Economic Impact Analysis of the Proposed Lodi Shopping Center," July 2004.

² Ibid (July 2004 report), p. 18.

³ Ibid, p. 18, Table 10.

⁴ Ibid, p. 15.

⁵ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007, p. 42.

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 4



tax revenue that would result from the development of the improvements for the Wal-Mart Supercenter. The City's share of property tax generated by the Supercenter is estimated at \$40,900. See Exhibit 4 in the attached January 12, 2009 memorandum for the derivation of this amount.

Summary of Business License Tax

The City of Lodi's Finance Department was the source of business license tax rates. Those rates were applied to the Wal-Mart Supercenter and to the businesses that will occupy the remainder of space in the Project. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the center, for a total of \$145,225 per year. See Exhibit 3 in the attached January 12, 2009 memorandum for all of the assumptions used.

I hope this additional information is helpful. Please let us know if anything requires further clarification.

Sincerely,

Elliot R. Stein
Senior Managing Director

cc: Alexis Pelosi; Sheppard, Mullin, Richter & Hampton LLP

MEMORANDUM

Date: January 12, 2009

To: City of Lodi

From: Elliot R. Stein
Senior Managing Director
CBRE Consulting, Inc.

Re: Proposed Lodi Shopping Center
Sales Tax, Property Tax and Business License Tax Impacts

CBRE Consulting, Inc. was asked to determine the impact of the development of the proposed Lodi Shopping Center ("the Center") on the City of Lodi's General Fund revenues. The Center will be anchored by a 226,868 square foot Wal-Mart Supercenter and an additional 113,098 square feet of other retail space (see Exhibit 1). CBRE Consulting relied upon certain information contained in the Economic Impact Analysis prepared by Bay Area Economics (BAE) in order to conduct this analysis.¹ Specifically, the BAE report was the source of the project description, square footages, and sales per square foot figures used to estimate sales and property tax revenues. In addition, CBRE Consulting obtained from the California Board of Equalization and the City of Lodi's Finance Department information on property tax, sales tax, and business license tax relevant to the City of Lodi. Findings are summarized below and presented in greater detail in the attached exhibits.

Sales Tax Generated by the Center

According to the California Board of Equalization, the City of Lodi receives 1.0 percent of taxable retail sales generated by businesses within the city. Since not all of the sales at the proposed Wal-Mart Supercenter or at the other retail businesses in the Center will be taxable sales (e.g. certain food items, prescription drugs, etc.), CBRE Consulting adjusted total projected sales by removing the non-taxable sales. The adjustments are explained in detail in Exhibit 2. Based on Bay Area Economics' sales estimates which were presented in 2005 dollars, sales tax revenue to the City of Lodi is estimated at \$1,080,700 from the Wal-Mart Supercenter plus an additional \$308,900 from the other stores in the Center, for a total of \$1,389,600/year (in 2005 dollars), assuming stabilized sales. It would be reasonable to escalate these figures to reflect sales in current dollars. However, for the sake of consistency with the BAE analysis, we did not escalate the numbers for this calculation.

¹ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

Business License Tax

Relying on the schedule of business license taxes provided by the City of Lodi Finance Department, CBRE Consulting estimated the annual taxes that would be payable by Wal-Mart and by the other tenants in the Center. Detailed assumptions are shown in Exhibit 3. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the Center, for a total of \$145,225/year.

Property Tax

Property taxes generated by the Wal-Mart Supercenter will be a function of its assessed value. For the purpose of this analysis, it was assumed that the value will be determined based on the cost approach to value. That is, the sum of direct construction costs plus indirect costs (i.e. fees for architecture, engineering, other consultants, financing, interest, entitlements, permits, insurance, etc.) was used as the basis for calculating real property taxes. Cost estimates from Wal-Mart were used to estimate the potential assessed value of the property (see Exhibit 4). Development costs for the remainder of the Center were not provided to CBRE Consulting; therefore, this estimate of property tax revenue to the City of Lodi is limited to the Wal-Mart store only.

It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused on the net property tax revenue that would result from the development of the Wal-Mart Supercenter. As shown in Exhibit 4, the net property tax generated by the Supercenter is estimated at \$358,630, of which an estimated \$40,920 represents the City of Lodi's share.

Net Increase in Sales Tax

CBRE Consulting was also asked to factor into the analysis of sales tax impact two additional considerations: the loss of sales tax resulting from the closure of the existing Lodi Wal-Mart store; and the new sales tax that could be expected from replacement tenants in the space Wal-Mart will be vacating. That analysis is presented in detail in Exhibit 5. It begins with the estimate of sales tax from the proposed Wal-Mart Supercenter (\$1,389,568 in 2005 dollars). That figure was escalated to 2007 dollars (to \$1,491,241) before adjusting for the closing of the existing Wal-Mart store and the addition of replacement tenants in order to have comparable numbers. The actual change in the Consumer Price Index from 2005 to 2007 was used to adjust to 2007 dollars (see Exhibit 5, footnote 5 for further detail). In summary, the closure of the existing Wal-Mart store would represent a loss of approximately \$548,000 per year in sales tax revenue to the City of Lodi, while replacement tenants generating industry average annual sales of \$350 per square foot would represent an estimated \$421,000 of new sales tax revenue to the City. Overall, the net increase in sales tax is estimated at \$1,364,000 in 2007 dollars, as shown below:

Sales Tax Revenue from Lodi Shopping Center	\$1,491,241
Less: Sales Tax from Existing Lodi Wal-Mart Store	(548,217)
Plus: Sales Tax from Replacement Tenants	<u>421,000</u>
Net Increase in Sales Tax Revenue to the City of Lodi	\$1,364,024

Among its conclusions, Bay Area Economics indicated that: "The net capture of sales from existing retail outlets in 2008 is estimated at approximately \$55 million."² In other words, there may be a diversion of sales from existing retail outlets in the trade area to the new Center, which would result in a decrease in sales tax to the City from those outlets. Because the trade area defined by Bay Area Economics is larger than the City of Lodi (it includes surrounding areas outside the city limits), not all of the \$55 million in diverted sales will impact the City. However, for the purpose of this analysis, it is reasonable to note that since most of the existing trade area retailers are located within the City, one can conservatively estimate that if all of these diverted sales were at the expense of City of Lodi retailers, then the loss of \$55 million in sales would equate to a loss of \$55 million x 1% = \$550,000 in sales tax revenue to the City of Lodi.

Conclusion

The estimated net gain to the City of Lodi from property, sales, and business license taxes is summarized below.

Type of Tax	Total Taxes Generated	Taxes Lost	Incremental Tax Gain
<i>Sales Tax</i>			
Lodi Shopping Center	\$1,491,241		
Existing Lodi Wal-Mart		(\$548,217)	
Replacement Tenants	\$421,000		
Diverted Sales		(\$550,000)	
<i>Property Tax (Wal-Mart only)</i>	\$40,920		
<i>Business License Tax</i>	\$145,225		
Total	\$2,098,386	(\$1,098,217)	\$1,000,169

Sources: CBRE Consulting.

² Ibid, p. 68.

ASSUMPTIONS AND GENERAL LIMITING CONDITIONS

CBRE Consulting, Inc. has made extensive efforts to confirm the accuracy and timeliness of the information contained in this study. Such information was compiled from a variety of sources, including interviews with government officials, review of government documents, and other third parties deemed to be reliable. Although CBRE Consulting, Inc. believes all information in this study is correct, it does not warrant the accuracy of such information and assumes no responsibility for inaccuracies in the information by third parties. We have no responsibility to update this report for events and circumstances occurring after the date of this report. Further, no guarantee is made as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions developed in connection with the study. In turn, these assumptions, and their relation to the projections, were developed using currently available economic data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, actual results achieved during the projection period will likely vary from the projections, and some of the variations may be material to the conclusions of the analysis.

Contractual obligations do not include access to or ownership transfer of any electronic data processing files, programs or models completed directly for or as by-products of this research effort, unless explicitly so agreed as part of the contract.

This report may not be used for any purpose other than that for which it is prepared. Neither all nor any part of the contents of this study shall be disseminated to the public through publication advertising media, public relations, news media, sales media, or any other public means of communication without prior written consent and approval of CBRE Consulting, Inc.

Exhibit 1
Sales Estimate and Distribution
Proposed Lodi Shopping Center
2005 Dollars

Store Characteristic/BOE Retail Category (1)	Square Feet (2)	Sales Per Square Foot (2)	Projected Sales (3)
<u>Proposed Wal-Mart Supercenter</u>			
Square Footage			
General Merchandise	176,313	\$564	\$99,510,918
Grocery	50,555	\$564	\$28,533,202
Total	226,868		\$128,044,120
<u>Other Stores</u>			
Square Footage (1)			
Apparel	8,131	\$300	\$2,439,411
Drug Store	14,788	\$478	\$7,068,664
Eating and Drinking Places	17,190	\$475	\$8,165,250
Other Retail	59,829	\$300	\$17,948,589
Non-Retail Uses	13,160	N/A	N/A
Total	113,098		\$35,621,913
Center Total	339,966		\$163,666,033

Sources: California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

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(2) Square footages and sales for the proposed shopping center provided by Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

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City of Lodi General Fund Impacts
Proposed Lodi Shopping Center Sales Tax Revenue
2005 Dollars

Sales Tax Assumptions	Amount
Sales Tax Revenue from Proposed Wal-Mart Supercenter	
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Total Taxable Sales	\$108,070,879
Local Tax Share to General Fund (3)	<u>1.0%</u>
Sales Tax Revenue from Wal-Mart	\$1,080,709
Sales Tax Revenue from Other Stores in the Center	
Taxable Drug Store Sales (4)	\$2,332,659
Other Taxable Sales (1)	<u>\$28,553,249</u>
Total Taxable Sales	\$30,885,908
Local Tax Share to General Fund (3)	<u>1.0%</u>
Sales Tax Revenue from the Remaining Center	\$308,859
Total Sales Tax Revenue to the City of Lodi	\$1,389,568

Sources: California State Board of Equalization; and CBRE Consulting.

(1) Refer to Exhibit 1.

(2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.

(3) Information obtained from the California Board of Equalization.

(4) It is estimated that only 33.0 percent of drug store sales are taxable.

Exhibit 3
Proposed Lodi Shopping Center Business License Tax Revenue
2008 Dollars

Business License Tax Assumptions (1)	Amount
Business License Tax Revenue from Proposed Wal-Mart	
Total Gross Receipts	\$128,044,120
Tax Rate (1)	\$1.00/\$1,000
Estimated Total Business License Tax for Wal-Mart	\$128,044
Business License Tax Revenue from Other Stores	
Apparel (2)	
Total Gross Receipts Per Store	\$609,900
Tax Per Store	\$210
Estimated Total Business License Tax for 4 Stores	\$840
Drug Store	
Total Gross Receipts	\$7,068,664
Tax Rate	\$.60/\$1,000
Estimated Total Business License Tax	\$4,241
Eating and Drinking Places (3)	
Total Gross Receipts Per Stores, 4 Fast Food	\$1,150,688
Total Gross Receipts Per Store, 2 Sit-Downs	\$1,781,250
Tax Per Store	\$450
Estimated Total Business License Tax	\$2,700
Other Retail (4)	
Total Gross Receipts Per Store	\$900,000
Tax Per Store	\$450
Estimated Total Business License Tax for 20 Stores	\$9,000
Non-Retail Uses (5)	
Total Gross Receipts, 8 Spaces	N/A
Tax Per Business	\$50
Estimated Total Business License Tax	\$400
Total for Other Stores	\$17,181
Total Estimated Business License Tax Revenue from the Center	\$145,225

Sources: City of Lodi Finance Department; and CBRE Consulting.

(1) The City of Lodi Finance Department the Business License Tax Rate for the Retail and Services Group is as follows:

<u>Gross Receipts</u>	<u>Tax or Tax Rate</u>
\$0 to \$200,000	\$50
\$200,001 to \$500,000	\$98
\$500,001 to \$900,000	\$210
\$900,001 to \$3,000,000	\$450
\$3,000,001 to \$10,000,000	\$.60/\$1,000
\$10,000,001 and greater	\$1.00/\$1,000 (no limit)

(2) Gross receipts for Apparel estimated based on 4 stores at 2,033 square feet each.

(3) Gross receipts for Eating and Drinking Places estimated based on 4 Fast Food and 2 Sit-Down restaurants at 2,423 and 3,750 square feet each, respectively.

(4) Gross receipts for Other Retail stores estimated based on 20 stores at 3,000 square feet each.

(5) Gross receipts for Non-Retail spaces conservatively estimated using 8 spaces at the minimum tax rate.

Exhibit 4
City of Lodi General Fund Revenue Impacts
Wal-Mart Supercenter Property Tax Revenue
2008 Dollars

	Amount
Wal-Mart Supercenter	
Total Direct Construction Costs (1)	\$26,800,000
Indirect Cost Estimate (2)	\$7,300,000
Land Cost (3)	N/A
Total Project Costs Excluding Land	\$34,100,000
Total Tax Basis (excluding Land)	\$34,100,000
County Tax Rate (4)	1.0517%
Total Tax to County	\$358,630
City Share of the County Tax Rate (4)	11.41%
Net Property Tax Revenue from Wal-Mart Supercenter (4)	\$40,920

Sources: San Joaquin County Treasurer-Tax Collector; Wal-Mart Stores Inc.; California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) Construction cost estimates provided by Wal-Mart Stores, Inc.

(2) Indirect construction costs estimates provided by Wal-Mart Stores, Inc.

(3) Net property tax revenue reflects tax on only the hard and soft costs of the project, excluding land cost. It is assumed that property tax is already being assessed on the land value; therefore, it is not incremental to this analysis.

(4) Information provided by San Joaquin County Treasurer-Tax Collector.

Exhibit 5
City of Lodi General Fund Impacts
Net Increase in Sales Tax Revenue From Proposed Lodi Shopping Center

Sales Tax Assumptions	Amount	
LODI SHOPPING CENTER		
Sales Tax Revenue from Proposed Wal-Mart Supercenter		
Non-Grocery Sales (1)	\$99,510,918	
Taxable Grocery Sales (2)	\$8,559,961	
Total Taxable Sales	\$108,070,879	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from Wal-Mart	\$1,080,709	
Sales Tax Revenue from Other Stores in the Center		
Taxable Drug Store Sales (4)	\$2,332,659	
Other Taxable Sales (1)	\$28,553,249	
Total Taxable Sales	\$30,885,908	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from the Remaining Center	\$308,859	
Total Sales Tax Revenue to the City of Lodi		
2005 Dollars	\$1,389,568	
2007 Dollars (5)	\$1,491,241	[A]
LESS: EXISTING LODI WAL-MART STORE		
Sales Tax Paid to City of Lodi (2007) (6)	\$548,217	[B]
PLUS: REPLACEMENT TENANTS AT EXISTING LODI WAL-MART STORE		
Taxable Sales (7)	\$42,100,000	
Local Tax Share to General Fund (3)	1.0%	
Sales Tax Revenue from Replacement Tenants	\$421,000	[C]
NET INCREASE IN SALES TAX REVENUE TO CITY OF LODI [A - B + C]	\$1,364,024	

Sources: California State Board of Equalization; State of California Department of Industrial Relations, Division of Labor Statistics and Research; Wal-Mart Stores, Inc.; and CBRE Consulting.

(1) Refer to Exhibit 1.

(2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.

(3) Information obtained from the California Board of Equalization.

(4) It is estimated that only 33.0 percent of drug store sales are taxable.

(5) Escalation based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research; annual CPI changes 3.9 percent from 2005-2006 and 3.29 percent from 2006-2007.

(6) Information provided by Wal-Mart Stores, Inc.

(7) This estimate is based on an industry sales per square foot standard of \$350 multiplied by 120,352 square feet.

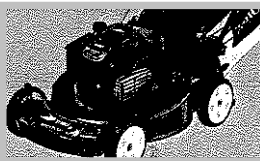
Jennifer Perrin

From: Randi Johl
Sent: Monday, April 13, 2009 09:44 AM
To: City Council
Cc: Blair King; Steve Schwabauer; Jeff Hood; Rad Bartlam; Jennifer Perrin; Kari Chadwick
Subject: Consumer Reports - Costco vs Walmart
Attachments: Consumer Reports.pdf

Attached please find a copy of a report that was provided to Council Member Mounce by a concerned citizen. It is being forwarded to the entire City Council upon request.

COSTCO VS.
WALMART

NO-HASSLE
LAWNS

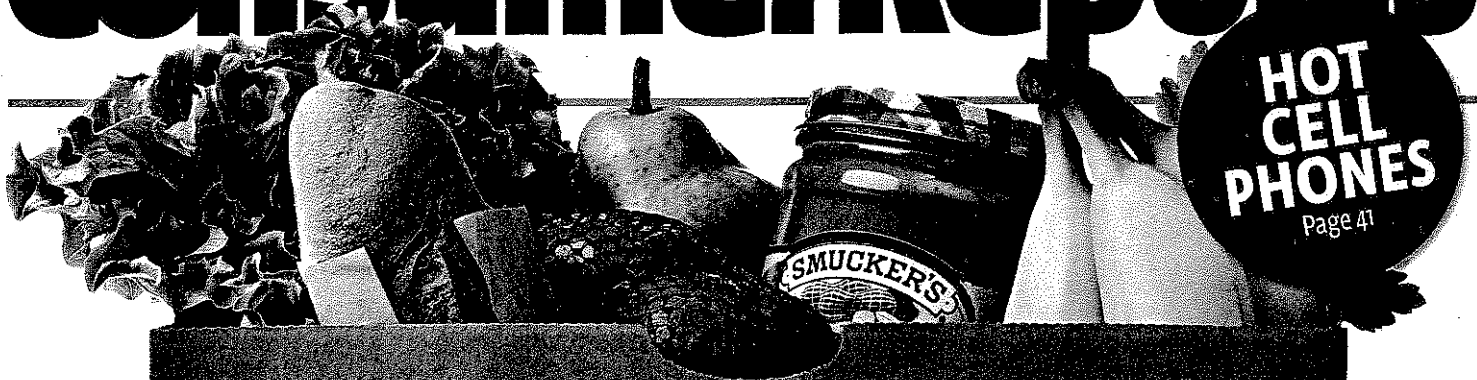


SMALL SUVs
& PICKUPS
PAGE 48

RELIEVE YOUR
BACK PAIN

MAY 2009 | CONSUMERREPORTS.ORG

ConsumerReports®



**HOT
CELL
PHONES**
Page 41

Shop Smart & Save Big

Save thousands
a year on
groceries

Great
everyday
products

Best & worst
supermarkets



Shop smart & save big

Our best tips, plus exclusive Ratings of 59 supermarkets

TO HELP YOU stretch your grocery dollar—the average U.S. family spends about \$5,000 per year—our latest supermarket feature couldn't come at a better time. Our reporter's shopping expeditions prove that you can save hundreds, even thousands of dollars per year. Our Consumer Reports National Research Center survey of 32,599 subscribers reveals big differences among 59 national and regional chains. Some were far better than others at offering low prices (Trader Joe's, Costco, Market Basket, WinCo, Aldi, and Sav-a-Lot), praiseworthy meat and produce (Wegmans and Whole Foods), or top service (Wegmans, Trader Joe's, and Raley's).

In the stores

Our survey also reaffirms that it's difficult to find a perfect store. The few chains that were spotless, offered standout meat and produce, and had a helpful and friendly staff earned average scores for price, at best. The least expensive markets generally offered so-so perishables and service.

That was true even among nationwide chains Whole Foods, Trader Joe's, Walmart, Target, Costco, and Sam's Club. Whole Foods was seen as more expensive than other stores with a national presence. And although Costco scored highly for nonfoods in another of our surveys (Up Front, page 8), it and Sam's Club have minimal service, carry a limited assort-

ment of mostly bulk items, and charge \$40 to \$50 per year to shop. Trader Joe's sells a narrow selection of mostly its own brands. Walmart, the nation's largest grocer and the supermarket where the highest percentage of survey respondents shopped (14 percent), landed near the bottom of the Ratings, with low scores for service and perishables. Target proved better than many chains but has only 200 locations with a full grocery store inside.

Overall, grocers earned higher marks than in our 2005 survey for service, checkout speed, and quality of store brands, baked goods, and produce. But respondents still had complaints, mostly about too few open checkout lanes. Walmart was the worst offender: Half of the respondents who shopped there said that not enough lanes were open. Other lead-

ing gripes: congested aisles and out-of-stock advertised specials. One-third of all respondents switched stores, usually in search of lower prices.

Wherever you shop, you can find good deals in this sagging economy. Like consumers, retailers are facing tough times, and they realize that they help themselves when they help customers make ends meet. Here are the trends that could save you money and make shopping easier:

More store brands. Almost all supermarkets offer store brands, and 66 percent of survey respondents told us they'd bought such products in the past month. Store brands sell for 25 percent less, on average, than the big brands, partly because they don't carry heavy product development and promotion costs, says Jim Hertel, a managing partner with Willard Bishop, a food retail consulting firm. Increasingly, stores are putting their own names on prepared meals, cold cuts, baked goods, fancy sauces, and organic goods in addition to the usual canned fruit, frozen veggies, and paper towels. Over the years, CONSUMER REPORTS' tests have found many store brands to be at least as good as national brands. Indeed, 70 percent of those surveyed said they were highly satisfied with the quality of store brands they'd purchased.

More visible value brands. Look for more "second tier," or price-oriented, store brands selling for about 35 percent

Inside

How we cut our bill in half
Page 17

13 ways to save
Page 18

Great everyday products
Page 20

Supermarket Ratings
Page 22

less, on average, than national brands. The names stress value and shopping savvy: A&P's Savings Plus and Smart Price, Safeway's Basic Red, Bashas' Valu Time, and Food Lion's Smart Option.

Expanded bonus-card programs.

Next to purchasing store brands, using a bonus card is the surest way to save at most chains. According to the Food Marketing Institute, a trade group, half of retailers now offer customers savings through card programs, with discounts such as two-for-one sales, members-only specials, and reward points toward future

purchases. Giant Food Stores, for example, doubles the value of manufacturers' coupons for members. And during a recent promotion at Vons, cardholders who spent \$100 received \$1.50 off their gas purchase at participating stations. Of the 56 percent of survey respondents who belong to a shopper's club, 87 percent were satisfied with membership-related savings.

More coupons. If you aren't clipping coupons for items you buy regularly, you're overspending. The average manufacturer's grocery coupon had a face value of \$1.08, according to NCH Marketing, a

coupon-processing firm. In 2008, 281 billion manufacturers' coupons were distributed, and 2.6 billion were redeemed. Yet about 30 percent of survey respondents said they hadn't used coupons within the past month. Most coupons are still to be found in newspapers and magazines, but some manufacturers offer them through Web-site downloads. Procter & Gamble, for instance, has coupons on its own site and on those of participating retailers. Dedicated coupon sites at www.coolsavings.com, www.coupons.com, www.smartsources.com.

Continued on page 22

How we cut our bill in half

By doing a little homework and adjusting your shopping habits, you could shave thousands of dollars off your yearly grocery bill.

That's what Tod Marks, author of the Tightwad Tod money-saving blog at www.ConsumerReports.org found when he used different strategies to shop for the same 30 products at two stores over several days in February. As a savvy shopper, he sniffed out the best deals on perishables and national brands; studied his local Stop & Shop's weekly flyer; searched for coupons in Sunday

newspapers, on manufacturers' Web sites, and at coupon sites such as SmartSource.com; and used his store bonus card. Next, he played the role of an impulsive shopper, filling his cart with pricier products in the

same categories and in similar quantities. He didn't use coupons or buy the cheapest-sized package. Then Marks chose Stop & Shop's own store-brand alternatives to the big brands, again in the same quantities. After that, he compared the unit prices for the same items at Costco Wholesale, a warehouse club known for day-in, day-out bargains,

By paying attention to price, Marks cut his cost by as much as 46 percent. Here's what he spent for his 30 products:

Impulsive at supermarket: **\$288.26**

Savvy at supermarket: **\$166.22**

Warehouse club: **\$156.16**

Store brands at supermarket: **\$154.62**

The chart at right, listing 10 items, gives an idea of how that price gap grew so big. For a free look at the complete chart, go to www.ConsumerReports.org.

Bottom line. Marks hit the jackpot by

shopping for store brands and buying a club. But those strategies alone won't be practical for everyone. Another approach: Plan menus and other purchases around a store's

weekly flyer, use a bonus card and coupons, and opt for store brands as often as possible. Warehouse clubs can be good for stocking up on bulk items at low everyday prices.

Select savings: 10 purchases compared

Product	Impulsive shopper	Savvy shopper	Warehouse-club shopper*	Store-brand shopper
Mustard	\$7.38 Maille, two 7.5-oz. jars	\$4.99 Grey Poupon, 1-lb jar	\$3.35 Grey Poupon	\$2.65
Disinfectant wipes	\$9.57 Lysol, three 35-sheet container	\$4.81 Clorox, 105-sheet container, sale	\$1.44 Clorox	\$2
Vegetable oil	\$7.98 Wesson, two 24-oz. bottles	\$5.29 Crisco, 48-oz. bottle, sale	\$2.34 Crisco	\$2.99
Cereal	\$8.98 Frosted Flakes, two 14-oz. boxes	\$3 Frosted Flakes, two 14-oz. boxes, card, coupon	\$3.10 Frosted Flakes	\$1.89
Premium pasta sauce	\$8.99 Rao's tomato basil, 24-oz. jar	\$2.50 Classico tomato basil, 24-oz. jar, sale	\$1.75 Classico	\$4.69
Multivitamins	\$17.98 One A Day, two 50-tablet bottles	\$4.99 Centrum silver, 100 tablets, sale, coupon	\$6.55 Centrum	\$5
Laundry detergent	\$14.99 Tide 2X liquid, 100 oz.	\$70.99 Tide 2X liquid, 100 oz., card	\$13.09 Tide 2X liquid	\$8.99
Disposable diapers	\$36.63 Huggies, three 30-count packs	\$21.49 Huggies, 100-pack, coupon	\$18.30 Huggies	\$16.99
Cream cheese	\$2.99 Philadelphia, 8 oz. soft	\$2.50 Philadelphia, 8-oz. bar	\$0.98 Philadelphia, bar	\$1.69
Bagged coffee	\$20.98 Peet's two 12-oz. bags	\$12.99 Dunkin' Donuts, 24-oz. bag, sale	\$9.59 Dunkin' Donuts	\$13.38
TOTAL (for 10 items)	\$136.47	\$73.55	\$60.49	\$60.25

*Because warehouse clubs sell huge sizes or multipacks, Costco's prices are based on Unit cost (per ounce, for example) and calculated for the "savvy shopper" sizes bought at the supermarket.

Continued from page 17

and www.shortcuts.com are worth a try, too. But they ask for personal information.

Extra-value coupons. If you live in a fiercely competitive market such as the New York metropolitan area, you might benefit from a price war in which chains double or triple manufacturers' coupons, usually those of up to 99 cents. Near our Yonkers, N.Y., headquarters, we've seen A&P, Waldbaum's, Pathmark (all owned by A&P), and ShopRite dangling such incentives.

Web-site specials. Today's more sophisticated sites let shoppers see the current store flyer, print out coupons, and create customized shopping lists. Price Chopper's site, for example, features recipes for feeding your family for around \$5 per person per meal. Move your cursor over items in Hannaford's flyer and you'll see the regular price, sale price, and the savings between the two. Web sites are also making shopping more convenient. The Food Marketing Institute estimates that 44 percent of supermarkets let shoppers submit orders electronically. At some branches of chains such as Albertsons and Hams Teeter, store employees will gather your groceries and load them into your car when you drive up. At select King Soopers, Hy-Vee, and others, they'll deliver. Pickup service typically costs \$5 to \$10; delivery, about twice as much.

Longer sales. Apart from their weekly specials, some chains have extended or frozen sale prices. Weis Markets, for instance, dropped the price of thousands of staples for 90 days this spring. Pathmark identifies its longer-term markdowns as "PriceHold" deals. Pathmark, in fact, unveiled a whole new type of store last year aimed squarely at cost-conscious shoppers. The chain's Price Impact format emphasizes those price-hold bargains, as well as less-expensive store brands, economical family packs, "yellow tag" savings (5,000 weekly specials), and "power priced" goods that represent the deepest discounts of the week.

Drug discounts. This past winter, many chains with pharmacies, including Wegmans, Stop & Shop, and Giant, offered consumers free generic antibiotics with a doctor's prescription. Year round, you'll discover a growing number of supermarkets selling low-cost generic drugs. Walmart, Target, Bashas', and Kroger are among the chains charging \$4 for a month's supply of commonly prescribed generics.

Wegmans

TRADER
JOE'S

Publix

Ratings Supermarkets

In order of readerscore.

 ● Better
○ Worst

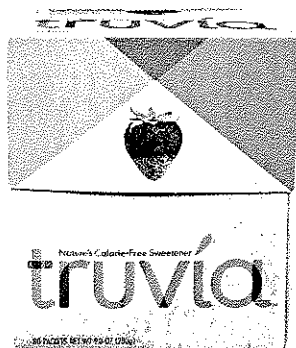
Order	Store	Reader score	Service	Perishables	Price	Cleanliness
		0		100		
1	Wegmans	87	●	●	●	●
2	Trader Joe's	86	●	●	●	●
3	Publix	84	●	●	●	●
4	Raley's	84	●	●	●	●
5	Harris Teeter	82	●	●	●	●
6	Fareway	81	●	●	●	●
7	Costco	81	●	●	●	●
	Whole Foods Market	81	●	●	●	●
9	Market Basket	81	●	●	●	●
10	WinCo Foods	80	●	●	●	●
11	Stater Bros.	80	●	●	●	●
12	Hy-Vee	79	●	●	●	●
13	Piggly Wiggly*	79	●	●	●	●
14	Aldi	79	●	●	●	●
15	Fry's Food Stores	78	●	●	●	●
16	Fred Meyer	77	●	●	●	●
17	Save Mart	77	●	●	●	●
18	King Soopers	77	●	●	●	●
19	H-E-B	77	●	●	●	●
20	SuperTarget	77	●	●	●	●
21	Hannaford	77	●	●	●	●
22	ShopRite	77	●	●	●	●
23	Ingles Market5	77	●	●	●	●
24	Schnucks	77	●	●	●	●
25	County Market	76	●	●	●	●
26	Dillons	76	●	●	●	●
27	Price Chopper	76	●	●	●	●
28	Cub Foods	76	●	●	●	●
29	Sav-a-Lot	76	●	●	●	●
30	Big Y	76	●	●	●	●
31	Bashas'	76	●	●	●	●
32	Meijer	75	●	●	●	●
33	Giant Food Stores	75	●	●	●	●
34	Smith's Food & Drug	75	●	●	●	●
35	Bi-Lo	75	●	●	●	●
36	Vons	74	●	●	●	●
37	Kroger	74	●	●	●	●
38	Sam's Club	74	●	●	●	●
39	Ralphs	74	●	●	●	●
40	Weis Market5	74	●	●	●	●
41	IGA	74	●	●	●	●
42	BJ's Wholesale Club	74	●	●	●	●
43	Albertsons	73	●	●	●	●
44	Safeway	73	●	●	●	●
45	Jewel-OxO	73	●	●	●	●
46	Giant Eagle	72	●	●	●	●
47	Acme	71	●	●	●	●
48	Stop & Shop	71	●	●	●	●
49	Pick 'n Save	71	●	●	●	●
50	Dominick's	70	●	●	●	●
51	Tops Markets	70	●	●	●	●
52	Pathmark	70	●	●	●	●
53	Food Lion	69	●	●	●	●
54	Giant	69	●	●	●	●
55	Winn-Dixie	69	●	●	●	●
56	Walmart Supercenter	69	●	●	●	●
57	Shaw's	69	●	●	●	●
58	A&P	68	●	●	●	●
59	Waldbaum's	64	●	●	●	●

*Ratings pertain to stores in Wisconsin, Iowa, and Illinois.

Guide to the Ratings

Ratings are based on 32,599 responses to the Grocery Store Shopper Survey conducted by the Consumer Reports National Research Center. Respondents told us about their experiences at one or two supermarkets, supercenters, or warehouse clubs between April 2007 and April 2008. The survey covers a total of 48,831 visits. Findings reflect the experiences of our readers, not necessarily those of the general population.

Reader score reflects overall satisfaction with the shopping experience and isn't limited to the criteria listed in the table. A score of 100 would mean all respondents were completely satisfied; 80 would mean very satisfied, on average; 60, fairly well satisfied. Differences of fewer than 6 points are not meaningful. Other scores reflect how each store compared with the Overall average in several categories. **Service** reflects a combination of staff helpfulness and checkout speed. **Perishables** pertains to the quality of meat and produce. Readers also judged **price** and **Cleanliness**.



Sweet challenge

Calorie-free, plant-based Truvia is "a miracle of nature," the manufacturer says. It combines the sweetener rebiana, from the leaves of the stevia plant; erythritol, a natural sweetener typically found in grapes and pears; and natural flavors. One packet is supposed to be as sweet as 2 teaspoons of sugar (32 calories).

Rebiana had been permitted as a dietary supplement; last December the Food and Drug Administration approved its use in foods and drinks despite earlier concerns. Here's what our panel of tasters found:

Coffee and iced tea. The difference between Truvia and sugar was subtle, but some tasters said the coffee with Truvia was more bitter overall. The tea had a lingering sweet aftertaste.

Cornflakes with milk. Both sugar and Truvia dissolved nicely in the milk, but Truvia on cereal didn't taste quite like sugar and had a big, lingering sweet aftertaste.

Strawberries. We dipped half of each berry in sugar, the other half in Truvia. The look and texture of the sweeteners were similar, but Truvia had an artificial flavor and bitterness.

Shortbread cookies. We used a recipe from the Truvia Web site. (Our real-sugar version incorporated confectioners' sugar.) The cookies made with sugar were toasted, had a tender texture and buttery flavor, and were slightly sweet. Truvia cookies had some grittiness, along with that lingering sweetness.

Bottom line. Truvia could be a good choice, especially in beverages, for someone on a sugar-restricted diet. But it may not make sense if you're on a restricted budget: We paid the equivalent of 9 cents per packet of Truvia, compared with a penny for 2 teaspoons of granulated sugar.



Costco outshines the rest

If you're shopping at a big retailer, you'll probably be happiest at Costco and least happy at Walmart or Kmart. That's a key finding from our recent online survey of 6,903 subscribers to ConsumerReports.org. They told us about more than 13,000 experiences shopping for everything from clothes to electronics to car-care products during the previous year.

We surveyed in October 2008, when the recession was ratcheting up. Only 20 percent of respondents said their shopping behavior had not changed in the previous year. Fifty-eight percent said they were holding off on unneeded purchases; 46 percent said they were shopping less often; 42 percent said they saw low prices, coupons, and sales as more important.

Overall, respondents to the Consumer Reports National Research Center survey

DID YOU KNOW?

34%

That's how many retail shoppers complained about too few open checkout lanes.

were far more pleased with the quality of personal-care items (77 percent rated them excellent or very good overall) than with that of clothes or jewelry (56 percent).

But where you shop for those clothes or jewels makes a big difference: Subscribers buying at Costco were significantly more satisfied with the **quality** of clothes and jewelry than those buying at most of the other eight stores we rated, including some better known for clothes, such as JCPenney. Subscribers also said Costco (along with Sam's Club and Kohl's) provided especially good value for its clothes and jewelry.

The main complaints about the biggest retailers as a group: long lines and too few open checkout lanes. Fifty-eight percent of subscribers tried to return at least one item to the store in the previous year, and 16 percent had a problem with the return.

Bottom line. Costco ranked highest overall in shopping satisfaction and was among the top choices for apparel. A basic membership in this warehouse club costs \$50, but according to our online subscribers, it's money well spent.

Ratings Big retailers

Store	Reader score*
Costco	85
Kohl's	79
Target	79
JCPenney	78
Sears	76
Sam's Club	76
Macy's	76
Walmart	68
Kmart	68

*Reflects satisfaction with all shopping experiences. Scores of 100 would mean all respondents were completely satisfied; 80 would mean very satisfied, on average; 60 fairly well satisfied. Differences of less than 4 points aren't meaningful. Respondents might not reflect the U.S. population.

Brett S. Jolley
bjolley@herumcrabtree.com

April 22, 2009

VIA E-MAIL

Ms. Randi Johl, City Clerk
221 W. Pine Street
Lodi, CA 95240

Re: Lodi First: Corrected Appeal to City Council re Lodi Shopping Center Project

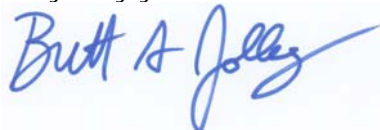
Dear Randi:

Please accept this letter as correction of Lodi First's April 15, 2009 letter appealing the Planning Commission's actions on April 8, 2009 regarding the Lodi Shopping Center Project. The \$300 appeal fee was paid by Check No. 19432, delivered to your office, along with the original appeal letter, on April 16, 2009.

I recently discovered that the original appeal letter contained a typographical error listing the date of the Planning Commission hearing as April 8, 2008 rather than April 8, 2009. Although your confirming e-mail acknowledged the appeal related to the April 8, 2009 hearing date (thank you), in order to ensure an accurate record, this letter formally corrects that typographical error and, to ensure no issues arise regarding timeliness of the correction, the correction is submitted within the appeal timeframe set forth in Lodi Municipal Code Section 17.88.060.A.1. All other information in the original appeal letter applies.

Should you have any questions, please feel free to contact me.

Very truly yours,



BRETT S. JOLLEY
Attorney-at-Law

cc: Client
Don Mooney, Counsel for Citizens for Open Government
Steve Schwabauer, City Attorney



Lodi Shopping Center

Applicant:

Browman Development Company

File No.:

U-02-12 – Use Permit

03-P-001 – Vesting Tentative Map

08-SP-08 - SPARC

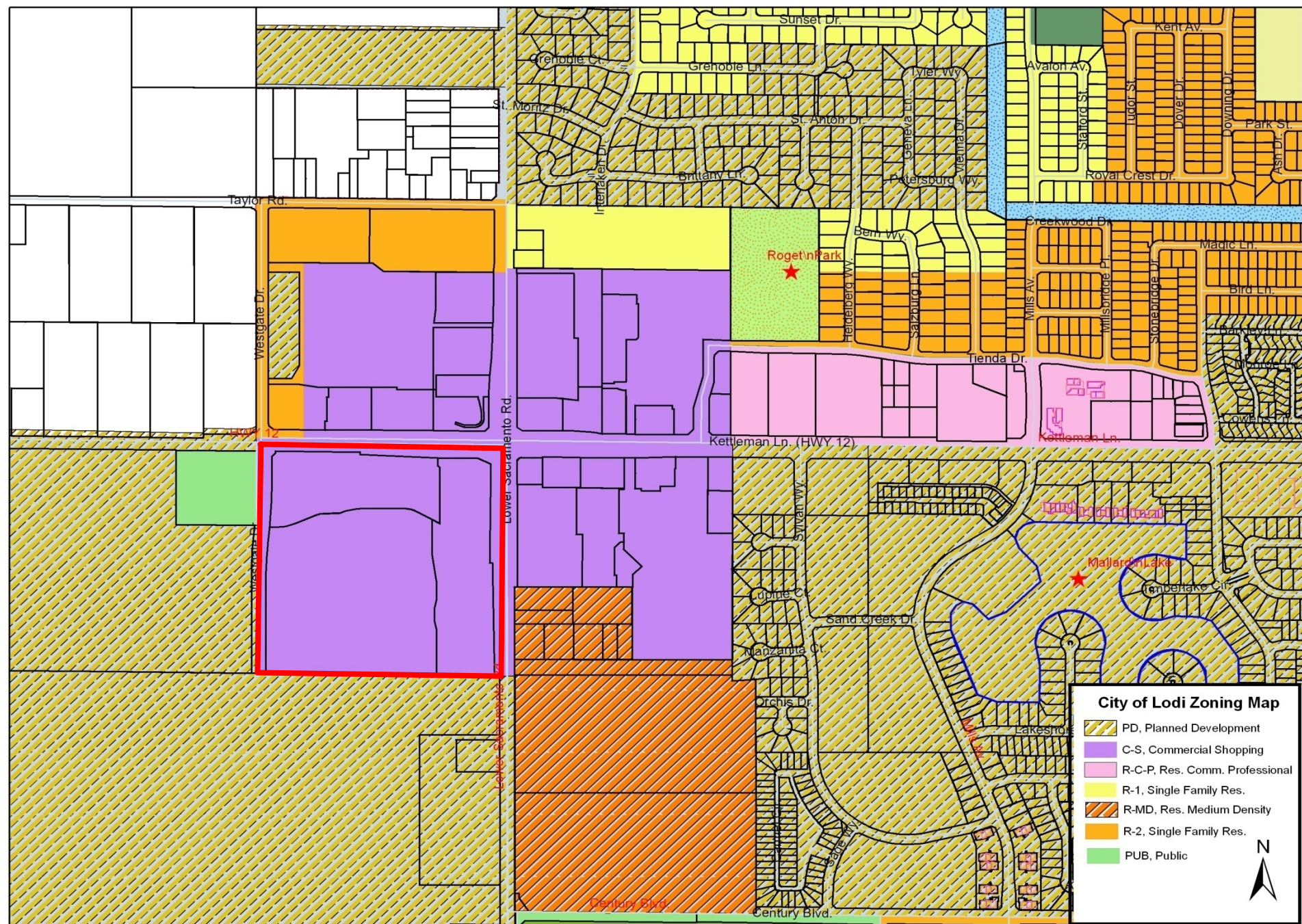


Lodi Shopping Center

■ **Background:**

- **Planning Commission approval:** December, 2004
- **City Council approval:** February, 2005
- **EIR found deficient for cumulative urban decay and energy impacts:** December, 2005
- **City Council rescinds original approvals:** May, 2006
- **Planning Commission Denies Final Revised EIR:** October, 2008
- **City Council Certifies FREIR:** March, 2009
- **Planning Commission Denies project approvals:** April 8, 2009

Lodi Shopping Center: Zoning & Vicinity Map



Lodi Shopping Center: Aerial View





Lodi Shopping Center

- **Use Permit:** C-S, Commercial Shopping District plan review of the site as well as the sale of alcoholic beverages within Wal-Mart building.
- **Vesting Tentative Map:** Allows the subdivision of the property into 12 parcels.
- **Site Plan and Architectural Review:** Required for all buildings in a C-S zone designation. Focus on architecture and site design.

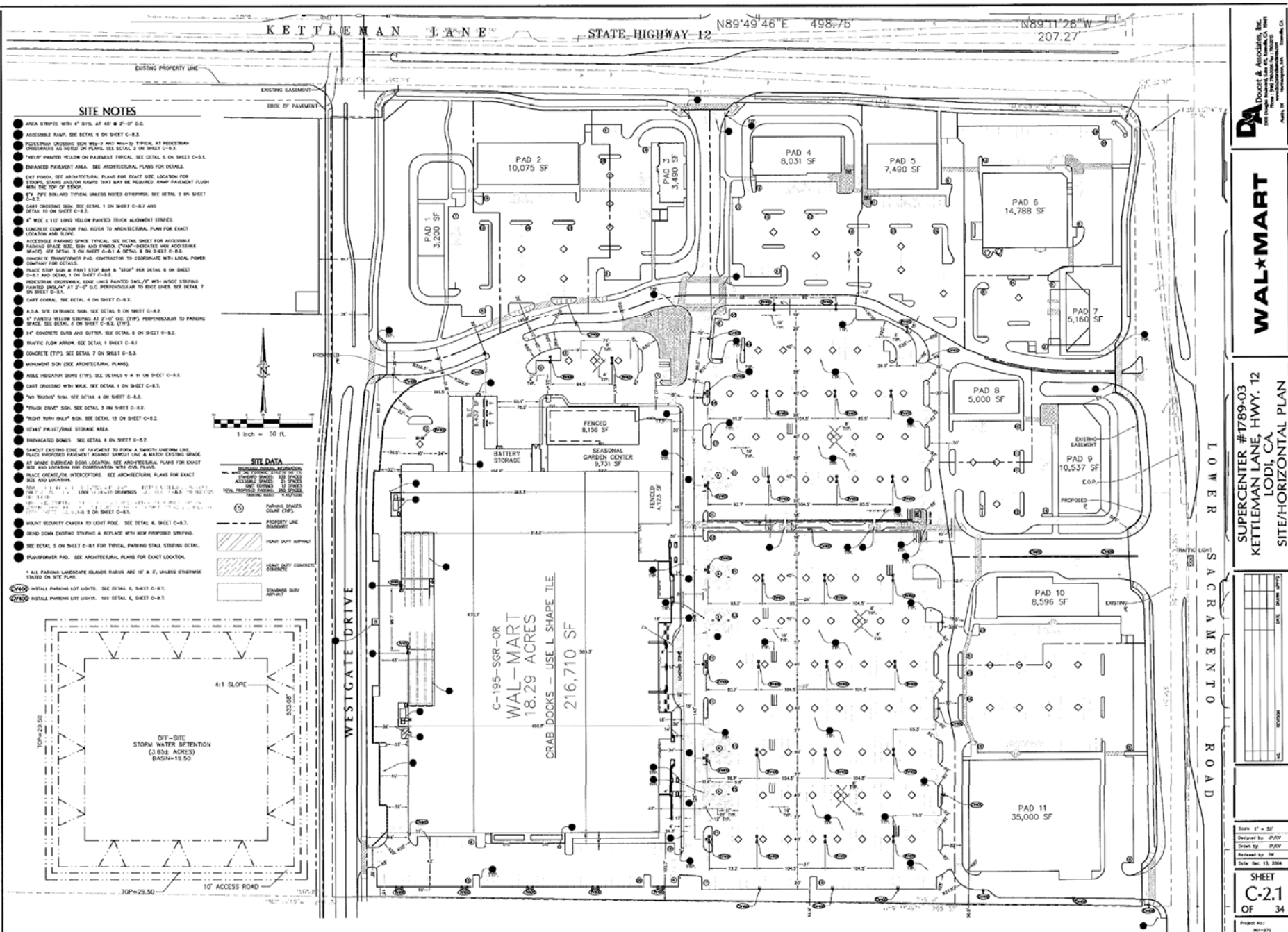


Lodi Shopping Center

■ Use Permit:

- Allows the sale of alcoholic beverages within the Wal-Mart building. The City has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested by the Wal-Mart.
- The C-S zoning designation requires all plot plans to be approved by the City.
- The plan presented is identical to that approved by the City Council in February, 2005. The plan meets or exceeds all requirements of the Lodi Zoning Ordinance including the Standards for Large Retail Establishments.

Lodi Shopping Center: Site Plan



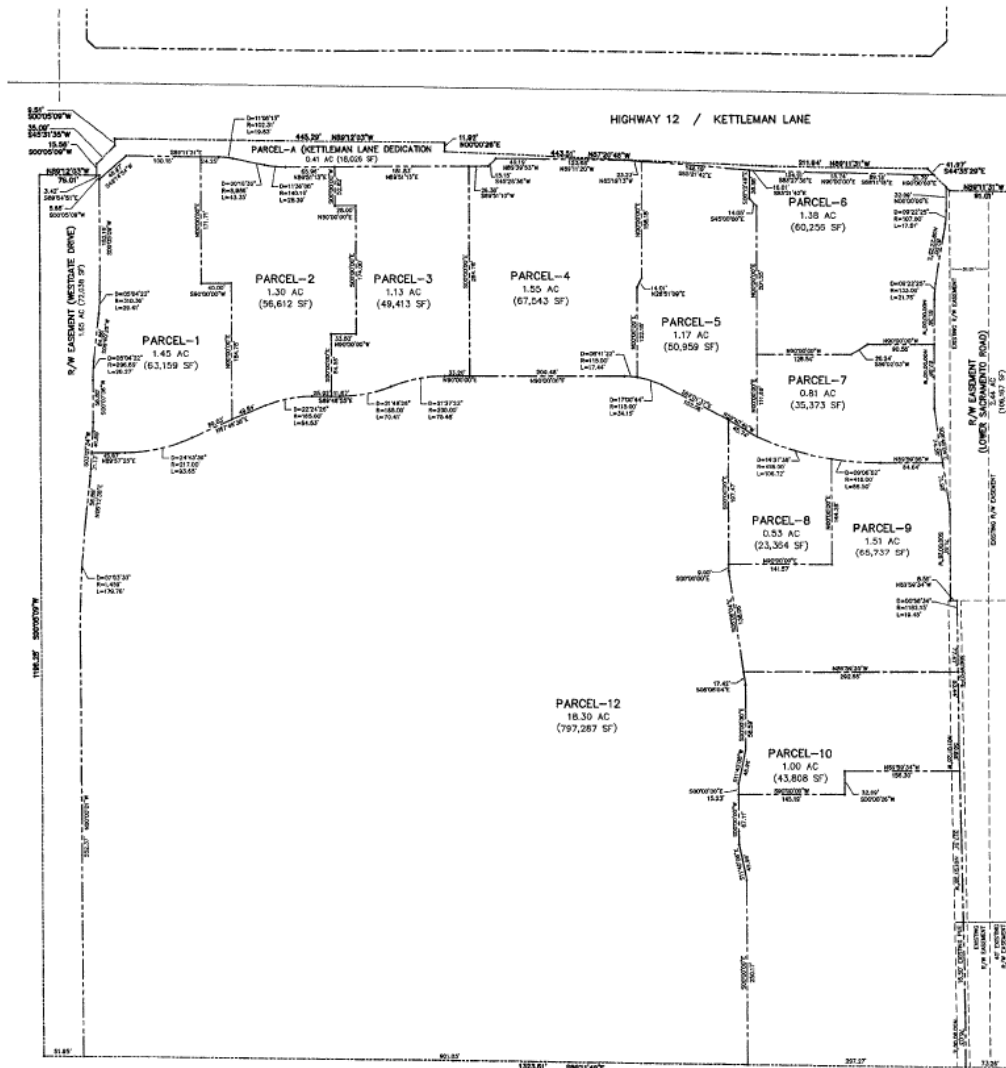


Lodi Shopping Center

- **Tentative Map:**

- The proposed Vesting Tentative Map includes 12 parcels which range in size from the largest lot at 18.3 acres to the smallest at .53 acres.
- All 12 buildings are on their own lot with associated parking.

Lodi Shopping Center: Vesting Tentative Parcel Map



*Vesting Tentative Map
Lot Layout
for
Lodi - III*

APNs: 058-030-01 & 058-030-02
County of San Joaquin, California
August 15, 2008
Sheet 2 of 2



DA Doucet & Associates, Inc.
1611 Crocker-Hughes Drive, Suite 175
Folsom, CA 95630-2500, Phone: (916) 766-2000 Fax: (916) 766-2015
www.doucetandassociates.com



Lodi Shopping Center

■ Site Plan and Architectural Review:

- The proposed project includes the construction of a new Wal-Mart building which is approximately 216,710 square feet. The Wal-Mart building would be located on the southwestern portion of the project site, and the building entrance would face east toward Lower Sacramento Road.
- Architectural materials such as concrete masonry block, metal awnings, and exterior plaster finish will be utilized on the exterior of the building.



Lodi Shopping Center

- **SPARC cont.:**

- There will be three entrances/exits from Lower Sacramento Road, one from Kettleman Lane (Hwy. 12), and two from Westgate Drive.
- The main parking lot is located on the east side of the Wal-Mart building. There will be smaller parking areas to serve the free-standing commercial pads. For the Wal-Mart building, a total of 965 parking spaces are proposed
- The proposed landscape plan calls for various large shade trees, smaller trees, shrubs and ground covers. A total of 478 larger shade trees will be provided within the parking lot interior, along the southern and western edges the property line, and throughout the site. This total number of trees exceeds what the City code requires.

Lodi Shopping Center: Landscape Plan



Lodi Shopping Center: Elevations



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations



Lodi Shopping Center: Elevations





Lodi Shopping Center

■ **Conclusion:**

- Based on the action of the City Council to Certify the Final Revised EIR, the plans submitted and the policies and previous actions of the City, staff recommends that the City Council make the appropriate findings and:
 - Approve Use Permit U-02-12,
 - Approve Vesting Tentative Map 03-P-001
 - Approve Site Plan and Architectural Review 08-SP-08

**** BLUE SHEET ****

**COMMENT LETTERS
RECEIVED BY CITY
CLERK'S OFFICE**

Through 3 p.m. on 5/13/09

Jennifer Perrin

From: Kari Chadwick
Sent: Monday, May 11, 2009 04:45 PM
To: Randi Johl
cc: Jennifer Perrin
Subject: FW: Vote No on Proposed Lodi Wal-Mart Supercenter

Kari Chadwick
Administrative Secretary
Community Development Department
(209) 333-6711

_-----Original Message-----

From: Steven Jones [mailto:sjones0145@gmail.com]
Sent: Monday, May 11, 2009 4:46 PM
To: Bob Johnson; Larry Hansen; Phil Katzakian; JoAnne Mounce; Susan Hitchcock; Kari Chadwick
Subject: Vote No on Proposed Lodi Wal-Mart Supercenter

Dear Lodi Mayor and Council,

I am one of many voices in opposition to the proposed 24-hour Wal-Mart Supercenter in Lodi. Our city should focus on protecting Lodi's existing businesses, particularly our locally owned businesses, and our quality of life.

Businesses throughout Lodi are struggling in this difficult economy, even without the added pressure of a 24-hour Wal-Mart Supercenter. Our country is in the worst recession in 27-years! Lodi's multiple shopping districts are littered with vacancies and more stores will certainly close. Look at what happened to Geweke Dodge!

The Lodi Shopping Center will provide no needed services to Lodi. The center will only serve to swap Wal-Marts, leaving one vacant big box store. We encourage you to remember what happened in Stockton when Wal-Mart closed their old store for a new Supercenter. THE OLD BIG BOX STORE REMAINED VACANT FOR YEARS!

Further, Wal-Mart has already gone back on its word with Lodi officials once. What makes our officials feel they will keep their word in the future?

Lodi is a beautiful community with a unique downtown and thriving wineries! Our city should be more creative in approving developments and generating revenues.

Please listen to your constituents and vote to deny the EIR certification for the Lodi Shopping Center! Thank you.

Steven Jones

2029 Petersburg Way
Lodi, California 95242
Phone: 7038507791
p.s.

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Delivered by CitizenSpeak!
Report abuse to abuse4citizenspeak.org [1504]



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415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

Writer's Direct Line: 415-774-2974
apelosi@sheppardmullin.com

May 12, 2009

Our File Number: 15CM-130407

VIA E-MAIL AND U.S. MAIL

Honorable Larry Hansen
Mayor
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Additional Documentation to Support Appeal of Planning Commission's
April 8, 2009, 3-3 Vote on the Lodi Shopping Center Project Approvals.

Dear Mayor Hansen and Honorable City Council Members:

This letter is submitted on behalf of Wal-Mart Stores, Inc. ("Wal-Mart") and Browman Development Company ("Browman") in support of their joint appeal of the Lodi Planning Commission's three to three (3-3) vote on April 8, 2009, on Use Permit (U-02-12), Vesting Tentative Parcel Map (03-P-001), and Site Plan and Architectural Review (08-SP-08) for the Lodi Shopping Center project (collectively referred to as "Project Entitlements").

It has been over seven (7) years since the Lodi Shopping Center Project was first proposed in the City of Lodi. Since that time there have been two lawsuits, numerous appeals and public hearings, and volumes of public comment. We know that this has been a long road and we want to thank the City and its staff for its years of hard work on this Project. We truly appreciate the City and the public's patience and input and look forward to what will hopefully be the final Project hearing on May 13, 2009. That said, we are writing to ask the City Council to re-approve the Project and make the required findings and statement of overriding consideration under the California Environmental Quality Act (CEQA).

SUMMARY

The Lodi Shopping Center Project is projected to bring approximately \$1 million in annual increased tax revenue to the City of Lodi. This revenue can help fund much needed public services for the businesses and residents of the City. The issue of whether the Project will cause significant adverse indirect impacts by causing urban decay, as that term is defined under CEQA, has been discussed and analyzed extensively. On March 11, 2009, by certifying the

Final Environmental Impact Report for the Project, the City Council found that substantial evidence supported the conclusions reached and no further discussion or analysis is needed or warranted, including for purposes of the return to the writ.

With regard to the Project's impact to prime agricultural farmland, the City of Lodi does not have an adopted policy on this issue. City practice, however, is to require development to obtain permanent conservation easements over ~~an~~ equal amount of farmland lost. Here, the Project is required to obtain an agricultural conservation easement over 40 acres of prime farmland in San Joaquin County. This is consistent with City practice and fully mitigates any direct impacts of the Project on agricultural lands.

Finally, because the Project will have significant adverse impacts that cannot be avoided or substantially lessened, the City Council will be required to adopt a statement of overriding considerations. The six (6) statements of overriding considerations included in the City Council Resolution approving the Project are supported by substantial evidence in the record and satisfy the requirements of CEQA.

I. The Project Will Contribute Significant Tax Revenue to the City of Lodi.

At the December 10, 2008, City Council meeting on the Revised Environmental Impact Report for the Project (State Clearinghouse No. 20030421 13) ("Revised EIR"), the City Council voiced questions and concerns regarding the tax revenue that would be generated from the Project. As a result, Wal-Mart commissioned CB Richard Ellis ("CBRE") to prepare a tax revenue analysis of the Project. That analysis was prepared on January 12, 2009, and presented to the City for the March 11, 2009, City Council hearing on the Revised Environmental Impact Report ("EIR") for the Project. At that hearing, Councilmembers Susan Hitchcock and Joanne Mounce expressed concerns regarding CBRE's findings. As a result, CBRE prepared a written response to those concerns that was submitted to the Planning Commission for their April 8, 2009, hearing on the Project Entitlements. A copy of that letter is attached as Attachment A.

The concerns raised at the March 11, 2009, City Council hearing focused on the wide disparity between the various estimates of tax revenue estimated to be generated by the Project, if re-approved, to the City. CBRE estimates that the net increase in sales tax revenue to the City from the Project is approximately \$814,000 (in 2007 dollars). The total net incremental tax gain to the City from the Project is approximately \$1 million dollars. *See* CBRE Consulting, Inc., January 12, 2009, Memorandum to City of Lodi, pg. 3. As explained in the CBRE January 12, 2009, memorandum, this \$1 million dollar figure is based on the net increase in sales tax revenue as well as increases in property tax and business license tax payments. It also takes into consideration the re-tenanting of the existing Wal-Mart Store as well as estimated diverted sales from other retailers.

The discrepancies between the various tax benefit figures can be explained in part by the fact that previous estimates were based on “average annual city sales tax for all California Wal-Mart Supercenters, while the higher figures in the CBRE Consulting analysis reflect specific assumptions about sales per square foot projected in the EIR” for the Project as unique to the City. CBRE Consulting, Letter to the Planning Commission, April 8, 2009, pg. 2. Regarding the discrepancies with the 2004 Applied Development Economics (“ADE”) reports, CBRE found that these reports used a lower annual sales per square foot (\$350 per square foot) as well as a lower diverted sales figure (\$36.2 million). *See id.* at pg. 3. Bay Area Economics (BAE), which prepared the economic analysis for the Revised EIR – and was independently hired by the City – estimated \$564 square feet with \$55 million in diverted sales. *See id.* CBRE’s analysis was correctly based on the most recent economic analysis prepared under CEQA for the Project – the BAE analysis.

The approximately \$1 million the Project is estimated to bring to the City of Lodi does not include the value to the City of the additional investment the Project is required to make in Downtown Lodi. Under condition 4-HH, the Applicant and Wal-Mart voluntarily agreed to the following:

”The developer shall invest in a building and/or capital improvements within the Downtown area, as defined by the Community Development Director, but no smaller than the area described in the June 1997 Downtown Development Standards and Guidelines plus the Pine Street Corridor extending to Washington. Investment shall be defined as supporting construction, rehabilitation, acquisition, tenant improvements and other improvements. The developer may make or support improvements to commercial buildings or property it owns or rents independently or in partnership with others, or to commercial property owned by others in partnership with owners and/or tenants. The downtown investment must be made no later than seven and a half (7.5) years from the issuance of final certificate of occupancy for the largest retail tenant. The total aggregate value of the capital improvements resulting from developer’s investment must exceed \$700,000.”

In addition, the approximately \$1 million estimate does not include the indirect tax benefits to the City from the increase in jobs that will be created from the Project. As stated in our March 10, 2009, letter to the City Council, it is estimated that up to 866 jobs will be created from the Project. While a portion of these jobs will be a relocation of jobs from the existing Wal-Mart (i.e., approximately 300 existing employees), more than fifty (50%) will be

new jobs at the Wal-Mart Supercenter and other retailers in the shopping center. Thus, the net true fiscal benefit of the Project to the City of Lodi exceeds \$1 million.

II. The Project Will Not Cause Urban Decay.

As discussed previously in our November 24, 2008, January 12, 2009, and March 10, 2009, letters, substantial evidence exists to find that the Project will not result in significant adverse impacts, either direct or cumulative, to the physical environment from urban decay. Over 100+ pages of tables, analyses, surveys, investigations, etc., exist to support a finding that the Project would not cause urban decay. Any potential for the Project to cause urban decay has been thoroughly analyzed.

On March 11, 2009, BAE submitted a memorandum to the City Council that, among other things, analyzed whether the current housing and economic situation impacted its previous analysis. BAE concluded the current market situation did not “affect its findings regarding urban decay.” BAE, Memorandum to City of Lodi, March 11, 2009, pg. 7. It stated that “the turmoil in the economy makes any kind of long term prediction difficult, and any further analysis by BAE could be subject to a ‘moving target’ problem, where the updates to the analysis would not be able to keep pace with events.” *Id.* at pg. 6. BAE also pointed out that the opening and operation of the Project is unlikely to occur until 2011 or 2012 and that by that time the economy is “likely to have come out of even this serious recession.” *Id.* at pg. 7. Thus, BAE stands by its analysis and conclusions regarding the lack of substantial evidence showing that the Project, if re-approved, would cause urban decay. Substantial evidence exists in the record to support the less-than-significant impact conclusions. The City Council can rely upon that information and other evidence in the record to reach the same conclusion, make the required findings, and adopt the statement of overriding considerations under CEQA.

III. The Project Will Comply with City Practices Regarding Offsets for Conversion of Prime Farmland

The Project site has been zoned and designated for commercial uses for over 10 years. The Project is consistent with the zoning and general plan designation and only requires a use permit, vesting tentative map, and site plan and architectural review. However, because the Project will convert approximately 40 acres of prime agricultural land to urban uses, it will be required to obtain a permanent agricultural easement over 40 acres of prime farmland in San Joaquin County. *See* Final Revised EIR, March 2008, pg. 116. According to the Draft Revised EIR, the City does not have an adopted policy or General Plan requirement to offset the loss of prime farmland. *See* Draft Revisions EIR, October 2007, pg. 57. Over the last few years the City has implemented a practice of imposing farmland offset or mitigation requirements on developments approved by the City.

Any requirement to offset or mitigate a Project impact must include a nexus between the "mitigation" required and the impact identified. CEQA and constitutional requirements dictate that there be an "essential nexus (i.e., connection) between the mitigation measure and a legitimate governmental interest." *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); CEQA Guidelines, § 15126.4(a)(4). Moreover, "[w]here the mitigation measure is an *ad hoc* exaction, it must be 'roughly proportional' to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854." (CEQA Guidelines sec. 15125.4(a)(4)(B).) Any requirements for offsets or mitigation that impose additional requirements beyond established programs and/or regulations will result in the measure being excessive and unnecessary.

Here, the proposed offset or mitigation required to address the impact from the loss of prime farmland meets the "essential nexus" and "roughly proportional" test. This is evidenced not only by the language in the Draft Revised EIR, but also by the fact that other recent development projects were also required to mitigate, or offset, agricultural losses on a 1:1 ratio. *See* Draft EIR, pg. 57; *see also* Ordinance No. 1785, City of Lodi, adopted on September 6, 2006, § 6.4.11, pg. 14 referencing Exhibit I. Contrary to the assertion of those economically motivated to oppose the Project, no justification or evidence exists to support a higher ratio of agricultural land preservation than proposed. Thus, any proposal to require greater than a 1:1 ratio for agricultural mitigation would be excessive and unnecessary and would not be supported by substantial evidence.

IV. The Statement of Overriding Considerations is Supported by Substantial Evidence in the Record.

A statement of overriding considerations under CEQA is required when a project will result in significant impacts that cannot be avoided or substantially lessened. CEQA Guidelines, § 15093(b). In this instance, the decision-making agency can balance the "economic, legal, social, technological or other benefits of a proposed project against its unavoidable environmental risk" and approve a project if the benefits outweigh the unavoidable adverse environmental effects. CEQA Guidelines, § 15093(a). **Any** statement of overriding considerations must be supported by substantial evidence in the record. CEQA Guidelines, § 15093(b).

The Environmental Impact Report prepared for the Lodi Shopping Center found that the Project would have significant and unavoidable impacts. As a result, the City Council will be required under CEQA to adopt a statement of overriding considerations **as** part of any Project approvals. The resolution drafted for the March 13, 2009, City Council hearing on the Project Entitlements included the following overriding considerations:

1. Project Will Generate City Taxes; and,

2. Project Creates Employment Opportunities for City Residents; and,
3. Project Will Implement Vital Municipal Infrastructure Improvements; and,
4. Project Implements Adopted City Plans; and,
5. Creates High Quality Design at Western Gateway to the City; and,
6. Project Features Numerous Energy Conserving Measures.

Each of these considerations is supported by substantial evidence in the record. For example, after each consideration there is a detailed explanation of the reasons and evidence to support the assertion that the stated benefit outweighs the unavoidable impact. In addition, the following are a few of the many examples of substantial evidence included in the record to support the various statements of overriding considerations:

- Letter to the City of Lodi from J. Kelly Collier, Senior Design Manager for Wal-Mart Real Estate and Design, dated October 6, 2008 and presented to the Planning Commission at its October 8, 2008, meeting.
- Memorandum to City of Lodi from Elliot R. Stein, Senior Managing Director CBRE Consulting, Inc., dated January 12, 2009, presented to the City Council at its March 11, 2009, hearing.
- Memorandum to Rad Bartlam, City of Lodi, from Raymond Kennedy, Vice Present, BAE, dated March 11, 2009, presented to the City Council at its March 11, 2009, hearing.
- Letter to Wendell Kiser, Planning Commission, City of Lodi, from Elliot R. Stein, Senior Managing Director CBRE Consulting, Inc., dated April 8, 2009, presented to the Planning Commission at its April 8, 2009, hearing.
- Draft Revised EIR, pages 79-84, listing various energy conserving measures that will be incorporated into the Project.

Substantial evidence exists in the record to support the City's statement of overriding considerations.

* * * * *

In closing, we would like to thank the City and its staff for the years of hard work on this Project. We appreciate the time that the City Council has taken over the last three and a

half years to hear and consider all of the information presented about the proposed re-approval of the Lodi Shopping Center. It has been a long road, with many bumps, but we are now at the finish line and respectfully request that the City Council re-approve the Lodi Shopping Center Project Entitlements and adopt the findings and statement of overriding considerations.

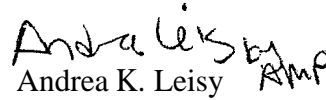
Very truly yours,



Alexis M. Pelosi

for SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

Very truly yours,



for REMY, THOMAS, MOOSE &
MANLEY LLP

Attachments

cc: Lodi City Council
Blair King, City Manager
Steve Schwabauer, City Attorney
Radlam Bartlam, Interim Community Development Director

Attachment A

CBRE CONSULTING, INC.

CBRE

CB RICHARD ELLIS

4 Embarcadero Center, Suite 700
San Francisco, CA 94111

T 415 781 8900

F 415 733 5530

www.cbre.com/consulting

April 8, 2009

Mr. Wendell Kiser
Chairman
and Members of the Planning Commission
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Additional Documentation to Clarify Information Presented at the March 11, 2009
Special Meeting of the Lodi City Council Regarding Tax Revenue Impacts of the
Proposed Lodi Shopping Center

Dear Chairman Kiser and Members of the Planning Commission:

During the public hearing portion of the above referenced Special Meeting, I presented estimates of the sales tax, property tax and business license taxes that would be generated by the proposed Lodi Shopping Center project (the "Project"). My presentation was based on information included in a memorandum to the City of Lodi, prepared by CBRE Consulting, Inc., dated January 12, 2009. A copy of that memorandum is attached. Please note it contains all of the assumptions relied upon to estimate tax revenue to the City from the Project. This letter is intended to briefly summarize our findings and to respond to questions raised by Councilmembers Susan Hitchcock and Joanne Mounce about apparent discrepancies between the CBRE Consulting findings and those presented by other sources.

Summary of Estimated Sales Tax

Our analysis considered four components in order to estimate the net impact of the Project on sales tax revenue to the City of Lodi:

- the gain of sales tax from the new Lodi Shopping Center including the 226,868 SF Wal-Mart Supercenter and an additional 113,098 SF of other stores;
- the loss of sales tax from the closing of the existing Lodi Wal-Mart;
- the gain of sales tax that could be generated by replacement tenants who occupy the existing Wal-Mart store after Wal-Mart vacates the premises; and
- the loss of sales tax resulting from the diversion of sales from existing retail outlets in the trade area (as concluded by Bay Area Economics [BAE] in its report, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," dated October 2007, prepared for the City of Lodi as part of the Project EIR [the "BAE Report"]).

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 2



As explained in the January 12, 2009 memorandum, the net increase in sales tax revenue to the City of Lodi was estimated to be \$814,000 (in 2007 dollars) as shown below.

<i>Sales Tax to the City of Lodi</i>	
Lodi Shopping Center	\$1,491,241
less: Existing Lodi Wal-Mart	(548,217)
plus: Replacement Tenants	421,000
less: Diverted Sales	(1550,000)
Total	814,024

The figure shown above for the Lodi Shopping Center breaks down as follows:

	<i>2005 Dollars</i>	<i>2007 Dollars</i>
Wal-Mart Supercenter	\$1,080,709	\$1,159,783
Other Stores	308,859	331,458
Total	\$1,389,568	\$1,491,241

At the Special Meeting, Councilmember Joanne Mounce stated that the CBRE Consulting estimate was inconsistent with a lower figure of \$790,000 which had been previously presented by Wal-Mart. We inquired into this figure and learned that it appeared in an ad by Wal-Mart which stated, in part: "Wal-Mart is one of the top revenue generators in the City of Lodi - in 2006 nearly \$600,000 in local sales tax revenue was generated from the Kettleman Lane store. The average California Supercenter contributes \$790,000 in sales tax, representing a 35.9% increase in Lodi." The difference between the CBRE Consulting estimate and the \$790,000 figure can be explained as follows:

- the \$790,000 is an average for all Wal-Mart Supercenters in California and appears to be presented in 2006 dollars.
- the CBRE Consulting estimate relied upon sales per square foot estimates contained in the BAE Report prepared for the City of Lodi as a part of the EIR. According to the BAE Report, those sales were, "...based on a blend of national Wal-Mart average and estimated sales per square foot for [the] existing store." For the sake of consistency with the economic analysis contained in the EIR, CBRE Consulting used the sales per square foot figures in the BAE Report to calculate estimated sales tax revenues.
- In summary, the \$790,000 figure (in 2006 dollars) is an average annual city sales tax for all California Wal-Mart Supercenters, while the higher figures appearing in the CBRE Consulting analysis reflect specific assumptions about sales per square foot projected in the EIR for the proposed Lodi Wal-Mart Supercenter.

Also at the Special Meeting, Councilmember Susan Hitchcock stated that a report prepared for the City by another economic consultant reached the conclusion that the proposed Project would not generate any new sales tax revenue to the City of Lodi. At Council member

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 3



Hitchcock's request, copies of ~~two~~ reports, both prepared by Applied Development Economics (ADE) in 2004, were provided to us.¹

The ~~two~~ reports are very similar; in fact the July 2004 report draws heavily on the contents of the June 2004 report. We found nothing in the ADE reports to indicate that the Project will not generate any new sales tax revenue to the City. It does conclude, however, "...that the proposed project will take \$36.2 million of sales away from established business assuming that the superstore anchor tenant is relocated from across the street." The remainder of the Project's demand would come from recapturing sales leakage and from "new sales earned by Proposed Project."³ By comparison, the BAE report used in the EIR prepared for the City was more pessimistic in its estimate of diverted sales (i.e. sales the proposed Project would divert from existing retail outlets in the trade area). BAE concluded that the Project could divert \$55 million in such sales, compared to ADE's lower figure of \$36.2 million. CBRE Consulting relied upon the larger BAE estimate to estimate the downward adjustment that would need to be made to arrive at a net sales tax impact number. Therefore, as shown in the table above and in CBRE Consulting's January 12, 2009 memorandum, \$55 million x 1% = \$550,000 was netted out of the calculation in order to derive the net sales tax impact of the Project on the City. In other words, the assumption used by BAE in the EIR (and by CBRE Consulting) is more conservative than the assumption used by ADE with respect to diverted sales.

A comparison of the 2004 ADE reports and the 2007 BAE Report also reveals a disparity between estimates of total sales for the Project. Both reports use the same square footage figures. However, ADE estimated total Project sales of \$111.5 million while BAE estimated \$163.7 million. The key difference in assumptions is that while ADE assumed Wal-Mart annual sales at \$350 per square foot ("The proposed Wal-Mart Supercenter Store is estimated to earn at least \$350 per SF of sales..."⁴), BAE estimated sales for the proposed Supercenter at \$564 per square foot based on more current information including national sales data for all Wal-Mart stores and estimated sales per square foot for Wal-Mart's existing Lodi store.⁵ For the sake of consistency with the EIR, CBRE Consulting used the BAE estimate of sales in order to calculate sales tax revenue to the City of Lodi.

Summary of Estimated **Property Tax**

The calculation of estimated property tax is straight-forward. It is based on a cost approach to value which would be used by the county assessor. Development cost estimates provided by Wal-Mart were used to estimate the assessed value of the property. It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused only on the net property

¹ Applied Development Economics, "Economic Impacts of the Proposed Lodi Shopping Center On Downtown Lodi," June 2004; and "Socio-Economic Impact Analysis of the Proposed Lodi Shopping Center," July 2004.

² Ibid (July 2004 report), p. 18.

³ Ibid, p. 18, Table 10.

⁴ Ibid, p. 15.

⁵ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007, p. 42.

CBRE CONSULTING, INC.

Mr. Wendell Kiser, Chairman
Members of the Planning Commission
April 8, 2009
Page 4



tax revenue that would result from the development of the improvements for the Wal-Mart Supercenter. The City's share of property tax generated by the Supercenter is estimated at \$40,900. See Exhibit 4 in the attached January 12, 2009 memorandum for the derivation of this amount.

Summary of Business License Tax

The City of Lodi's Finance Department was the source of business license tax rates. Those rates were applied to the Wal-Mart Supercenter and to the businesses that will occupy the remainder of space in the Project. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the center, for a total of \$145,225 per year. See Exhibit 3 in the attached January 12, 2009 memorandum for all of the assumptions used.

I hope this additional information is helpful. Please let us know if anything requires further clarification.

Sincerely,

Elliot R. Stein
Senior Managing Director

cc: Alexis Pelosi; Sheppard, Mullin, Richter & Hampton LLP

MEMORANDUM

Date: January 12, 2009

To: City of Lodi

From: Elliot R. Stein
Senior Managing Director
CBRE Consulting, Inc.

Re: Proposed Lodi Shopping Center
Sales Tax, Property Tax and Business License Tax Impacts

CBRE Consulting, Inc. was asked to determine the impact of the development of the proposed Lodi Shopping Center ("the Center") on the City of Lodi's General Fund revenues. The Center will be anchored by a 226,868 square foot Wal-Mart Supercenter and an additional 113,098 square feet of other retail space (see Exhibit 1). CBRE Consulting relied upon certain information contained in the Economic Impact Analysis prepared by Bay Area Economics (BAE) in order to conduct this analysis.¹ Specifically, the BAE report was the source of the project description, square footages, and sales per square foot figures used to estimate sales and property tax revenues. In addition, CBRE Consulting obtained from the California Board of Equalization and the City of Lodi's Finance Department information on property tax, sales tax, and business license tax relevant to the City of Lodi. Findings are summarized below and presented in greater detail in the attached exhibits.

Sales Tax Generated by the Center

According to the California Board of Equalization, the City of Lodi receives 1.0 percent of taxable retail sales generated by businesses within the city. Since not all of the sales at the proposed Wal-Mart Supercenter or at the other retail businesses in the Center will be taxable sales (e.g. certain food items, prescription drugs, etc.), CBRE Consulting adjusted total projected sales by removing the non-taxable sales. The adjustments are explained in detail in Exhibit 2. Based on Bay Area Economics' sales estimates which were presented in 2005 dollars, sales tax revenue to the City of Lodi is estimated at \$1,080,700 from the Wal-Mart Supercenter plus an additional \$308,900 from the other stores in the Center, for a total of \$1,389,600/year (in 2005 dollars), assuming stabilized sales. It would be reasonable to escalate these figures to reflect sales in current dollars. However, for the sake of consistency with the BAE analysis, we did not escalate the numbers for this calculation.

¹ Bay Area Economics, "Economic Impact/Urban Decay Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

CBRE CONSULTING, INC.

City of Lodi
January 12, 2009
Page 2



Business License Tax

Relying on the schedule of business license taxes provided by the City of Lodi Finance Department, CBRE Consulting estimated the annual taxes that would be payable by Wal-Mart and by the other tenants in the Center. Detailed assumptions are shown in Exhibit 3. Business license taxes are estimated at \$128,000 per year from Wal-Mart plus approximately \$17,000/year from the other stores in the Center, for a total of \$145,225/year.

Property Tax

Property taxes generated by the Wal-Mart Supercenter will be a function of its assessed value. For the purpose of this analysis, it was assumed that the value will be determined based on the cost approach to value. That is, the sum of direct construction costs plus indirect costs (i.e. fees for architecture, engineering, other consultants, financing, interest, entitlements, permits, insurance, etc.) was used as the basis for calculating real property taxes. Cost estimates from Wal-Mart were used to estimate the potential assessed value of the property (see Exhibit 4). Development costs for the remainder of the Center were not provided to CBRE Consulting; therefore, this estimate of property tax revenue to the City of Lodi is limited to the Wal-Mart store only.

It was assumed that property tax is already being assessed on the land and that taxes are already being received on that component of the property. Therefore, CBRE Consulting focused on the net property tax revenue that would result from the development of the Wal-Mart Supercenter. As shown in Exhibit 4, the net property tax generated by the Supercenter is estimated at \$358,630, of which an estimated \$40,920 represents the City of Lodi's share.

Net Increase in Sales Tax

CBRE Consulting was also asked to factor into the analysis of sales tax impact two additional considerations: the loss of sales tax resulting from the closure of the existing Lodi Wal-Mart store; and the new sales tax that could be expected from replacement tenants in the space Wal-Mart will be vacating. That analysis is presented in detail in Exhibit 5. It begins with the estimate of sales tax from the proposed Wal-Mart Supercenter (\$1,389,568 in 2005 dollars). That figure was escalated to 2007 dollars (to \$1,491,241) before adjusting for the closing of the existing Wal-Mart store and the addition of replacement tenants in order to have comparable numbers. The actual change in the Consumer Price Index from 2005 to 2007 was used to adjust to 2007 dollars (see Exhibit 5, footnote 5 for further detail). In summary, the closure of the existing Wal-Mart store would represent a loss of approximately \$548,000 per year in sales tax revenue to the City of Lodi, while replacement tenants generating industry average annual ~~sales~~ of \$350 per square foot would represent an estimated \$421,000 of new sales tax revenue to the City. Overall, the net increase in sales tax is estimated at \$1,364,000 in 2007 dollars, as shown below:

Sales Tax Revenue from Lodi Shopping Center	\$1,491,241
Less: Sales Tax from Existing Lodi Wal-Mart Store	(548,217)
Plus: Sales Tax from Replacement Tenants	<u>421,000</u>
Net Increase in Sales Tax Revenue to the City of Lodi	\$1,364,024

Among its conclusions, Bay Area Economics indicated that: "The net capture of sales from existing retail outlets in 2008 is estimated at approximately \$55 million."² In other words, there may be a diversion of sales from existing retail outlets in the trade area to the new Center, which would result in a decrease in sales tax to the City from those outlets. Because the trade area defined by Bay Area Economics is larger than the City of Lodi (it includes surrounding areas outside the city limits), not all of the \$55 million in diverted sales will impact the City. However, for the purpose of this analysis, it is reasonable to note that since most of the existing trade area retailers are located within the City, one can conservatively estimate that if all of these diverted sales were at the expense of City of Lodi retailers, then the loss of \$55 million in sales would equate to a loss of \$55 million x 1% = \$550,000 in sales tax revenue to the City of Lodi.

Conclusion

The estimated net gain to the City of Lodi from property, sales, and business license taxes is summarized below.

Type of Tax	Total Taxes Generated	Taxes Lost	Incremental Tax Gain
Sales Tax			
Lodi Shopping Center	\$1,491,241		
Existing Lodi Wal-Mart		(\$548,217)	
Replacement Tenants	\$421,000		
Diverted Sales		(\$550,000)	
Property Tax (Wal-Mart only)	\$40,920		
Business License Tax	\$145,225		
Total	\$2,098,386	(\$1,098,217)	\$1,000,169

Sources: CBRE Consulting.

² Ibid, p. 68.

ASSUMPTIONS AND GENERAL LIMITING CONDITIONS

CBRE Consulting, Inc. has made extensive efforts to confirm the accuracy and timeliness of the information contained in this study. Such information was compiled from a variety of sources, including interviews with government officials, review of government documents, and other third parties deemed to be reliable. Although CBRE Consulting, Inc. believes all information in this study is correct, it does not warrant the accuracy of such information and assumes no responsibility for inaccuracies in the information by third parties. We have no responsibility to update this report for events and circumstances occurring after the date of this report. Further, no guarantee is made as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters.

The accompanying projections and analyses are based on estimates and assumptions developed in connection with the study. In turn, these assumptions, and their relation to the projections, were developed using currently available economic data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, actual results achieved during the projection period will likely vary from the projections, and some of the variations may be material to the conclusions of the analysis.

Contractual obligations do not include access to or ownership transfer of any electronic data processing files, programs or models completed directly for or as by-products of this research effort, unless explicitly so agreed as part of the contract.

This report may not be used for any purpose other than that for which it is prepared. Neither all nor any part of the contents of this study shall be disseminated to the public through publication advertising media, public relations, news media, sales media, or any other public means of communication without prior written consent and approval of CBRE Consulting, Inc.

Exhibit 1
Sales Estimate and Distribution
Proposed Lodi Shopping Center
2005 Dollars

Store Characteristic/BOE Retail Category (1)	Square Feet (2)	Sales Per Square Foot (2)	Projected Sales (3)
<u>Proposed Wal-Mart Supercenter</u>			
Square Footage			
General Merchandise	176,313	\$564	\$99,510,918
Grocery	<u>50,555</u>	\$564	<u>\$28,533,202</u>
Total	226,868		\$ 128,044,120
<u>Other Stores</u>			
Square Footage (1)			
Apparel	8,131	\$300	\$2,439,411
Drug Store	14,788	\$478	\$7,068,664
Eating and Drinking Places	17,190	\$475	\$8,165,250
Other Retail	59,829	\$300	\$17,948,589
Non-Retail Uses	<u>13,160</u>	N/A	<u>N/A</u>
Total	113,098		\$35,621,913
Center Total	339,966		\$163,666,033

Sources: California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) **BOE** is the State of California Board of Equalization, which collects sales taxes from retailers and provides public tabulations of the occurrence and level of taxable sales in the categories provided.

(2) Square footages and sales for the proposed shopping center provided by Bay Area Economics, "Economic Impact/Urban Decoy Analysis for Proposed Lodi Shopping Center in Lodi, CA," October 2007.

(3) Totals may not add due to rounding.

Exhibit 2
City of Lodi General Fund Impacts
Proposed Lodi Shopping Center Sales Tax Revenue
2005 Dollars

Sales Tax Assumptions	Amount
Sales Tax Revenue from Proposed Wal-Mart Supercenter	
Non-Grocery Sales (1)	\$99,510,918
Taxable Grocery Sales (2)	<u>\$8,559,961</u>
Total Taxable Sales	<u>\$108,070,879</u>
Local Tax Share to General Fund (3)	<u>1.0%</u>
Sales Tax Revenue from Wal-Mart	\$1,080,709
Sales Tax Revenue from Other Stores in the Center	
Taxable Drug Store Sales (4)	\$2,332,659
Other Taxable Sales (1)	<u>\$28,553,249</u>
Total Taxable Sales	<u>\$30,885,908</u>
Local Tax Share to General Fund (3)	<u>1.0%</u>
Sales Tax Revenue from the Remaining Center	\$308,859
Total Sales Tax Revenue to the City of Lodi	\$1,389,568

Sources: California State Board of Equalization; and CBRE Consulting.

(1) Refer to Exhibit 1.

(2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.

(3) Information obtained from the California Board of Equalization.

(4) It is estimated that only 33.0 percent of drug store sales are taxable.

Exhibit 3
Proposed Lodi Shopping Center Business License Tax Revenue
2008 Dollars

Business License Tax Assumptions (1)	Amount
Business License Tax Revenue from Proposed Wal-Mart	
Total Gross Receipts	\$128,044,120
Tax Rate (1)	<u>\$1.00/\$1,000</u>
Estimated Total Business License Tax for Wal-Mart	\$128,044
Business License Tax Revenue from Other Stores	
Apparel (2)	
Total Gross Receipts Per Store	\$609,900
Tax Per Store	<u>\$210</u>
Estimated Total Business License Tax for 4 Stores	\$840
Drug Store	
Total Gross Receipts	\$7,068,664
Tax Rate	<u>\$.60/\$1,000</u>
Estimated Total Business License Tax	\$4,241
Eating and Drinking Places (3)	
Total Gross Receipts Per Stores, 4 Fast Food	\$1,150,688
Total Gross Receipts Per Store, 2 Sit-Downs	\$1,781,250
Tax Per Store	<u>\$450</u>
Estimated Total Business License Tax	\$2,700
Other Retail (4)	
Total Gross Receipts Per Store	\$900,000
Tax Per Store	<u>\$450</u>
Estimated Total Business License Tax for 20 Stores	\$9,000
Non-Retail Uses (5)	
Total Gross Receipts, 8 Spaces	N/A
Tax Per Business	<u>\$50</u>
Estimated Total Business License Tax	\$400
Total for Other Stores	\$17,181
Total Estimated Business License Tax Revenue from the Center	\$145,225

Sources: City of Lodi Finance Department; and CBRE Consulting.

(1) The City of Lodi Finance Department the Business License Tax Rate for the Retail and Services Group is as follows:

<u>Gross Receipts</u>	<u>Tax or Tax Rate</u>
\$0 to \$200,000	\$50
\$200,001 to \$500,000	\$98
\$500,001 to \$900,000	\$210
\$900,001 to \$3,000,000	\$450
\$3,000,001 to \$10,000,000	\$.60/\$1,000
\$10,000,001 and greater	\$1.00/\$1,000 (no limit)

(2) Gross receipts for Apparel estimated based on 4 stores at 2,033 square feet each.

(3) Gross receipts for Eating and Drinking Places estimated based on 4 Fast Food and 2 Sit-Down restaurants at 2,423 and 3,750 square feet each, respectively.

(4) Gross receipts for Other Retail stores estimated based on 20 stores at 3,000 square feet each.

(5) Gross receipts for Non-Retail spaces conservatively estimated using 8 spaces at the minimum tax rate.

Exhibit 4
City of Lodi General Fund Revenue Impacts
Wal-Mart Supercenter Property Tax Revenue
2008 Dollars

	Amount
Wal-Mart Supercenter	
Total Direct Construction Costs (1)	\$26,800,000
Indirect Cost Estimate (2)	\$7,300,000
Land Cost (3)	N/A
Total Project Costs Excluding Land	\$34,100,000
Total Tax Basis (excluding Land)	\$34,100,000
County Tax Rate (4)	1.0517%
Total Tax to County	\$358,630
City Share of the County Tax Rate (4)	11.41%
Net Property Tax Revenue from Wal-Mart Supercenter (4)	\$40,920

Sources: San Joaquin County Treasurer-Tax Collector; Wal-Mart Stores Inc.; California State Board of Equalization; Bay Area Economics; and CBRE Consulting.

(1) Construction cost estimates provided by Wal-Mart Stores, Inc.

(2) Indirect construction costs estimates provided by Wal-Mart Stores, Inc.

(3) Net property tax revenue reflects tax on only the hard and **soft** costs of the project, excluding land cost. It is assumed that property tax is already being assessed on the land value; therefore, it is not incremental to this analysis.

(4) Information provided by San Joaquin County Treasurer-Tax Collector.

Exhibit 5
City of Lodi General Fund Impacts
Net Increase in Sales Tax Revenue From Proposed Lodi Shopping Center

Sales Tax Assumptions	Amount	
LODI SHOPPING CENTER		
Sales Tax Revenue from Proposed Wal-Mart Supercenter		
Non-Grocery Sales (1)	\$99,510,918	
Taxable Grocery Sales (2)	<u>\$8,559,961</u>	
Total Taxable Sales	\$108,070,879	
Local Tax Share to General Fund (3)	<u>1.0%</u>	
Sales Tax Revenue from Wal-Mart	\$1,080,709	
Sales Tax Revenue from Other Stores in the Center		
Taxable Drug Store Sales (4)	\$2,332,659	
Other Taxable Sales (1)	<u>\$28,553,249</u>	
Total Taxable Sales	\$30,885,908	
Local Tax Share to General Fund (3)	<u>1.0%</u>	
Sales Tax Revenue from the Remaining Center	\$308,859	
Total Sales Tax Revenue to the City of Lodi		
2005 Dollars	\$1,389,568	
2007 Dollars (5)	\$1,491,241	[A]
LESS: EXISTING LODI WAL-MART STORE		
Sales Tax Paid to City of Lodi (2007) (6)	\$548,217	[B]
PLUS: REPLACEMENT TENANTS AT EXISTING LODI WAL-MART STORE		
Taxable Sales (7)	\$42,100,000	
Local Tax Share to General Fund (3)	<u>1.0%</u>	
Sales Tax Revenue from Replacement Tenants	\$421,000	[C]
NET INCREASE IN SALES TAX REVENUE TO CITY OF LODI [A - B + C]	\$1,364,024	

Sources: California State Board of Equalization; State of California Department of Industrial Relations, Division of Labor Statistics and Research; Wal-Mart Stores, Inc.; and CBRE Consulting.

- (1) Refer to Exhibit 1.
- (2) The Wal-Mart Supercenter's total grocery sales are estimated at \$28.5 million (refer to Exhibit 1). It is estimated that only 30.0 percent of grocery sales are taxable.
- (3) Information obtained from the California Board of Equalization.
- (4) It is estimated that only 33.0 percent of drug store sales are taxable.
- (5) Escalation based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research; annual CPI changes 3.9 percent from 2005-2006 and 3.29 percent from 2006-2007.
- (6) Information provided by Wal-Mart Stores, Inc.
- (7) This estimate is based on an industry sales per square foot standard of \$350 multiplied by 120,352 square feet.

Jennifer Perrin

From: Randi Johl
Sent: Tuesday, May 12, 2009 03:59 PM
To: Jennifer Perrin
Subject: FW: Walmart

From: Dan Wolcott [mailto:dan@downingpaint.com]
Sent: Tuesday, May 12, 2009 1:17 PM
To: Randi Johl; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen
Subject: Walmart

Again we are facing the Wal-Mart issue in a meeting on Wednesday. I am amazed that you all have kept your council jobs, which at some point I voted for you all and that will not continue. It seems to me that over the years the people of Lodi (or the voting majority) have said no to the Wal-Mart super center and yet we continue to be dealing with that same issue. If you look at the vacant retail space that is in Lodi (just look across the street from the proposed Wal-Mart development) adding more makes no sense. What you gain you lose, as an example my wife owns a business in the Vintners Square (Lowe's) shopping center and the addition of the Wal-Mart development and what it will bring will shut her down. She is a life time (born and raise) Lodian and a women owned business that can not compete against the corporate funded competitors. The hope as I see it, based on the councils decision to continue to support bad growth is that she only has 2 years left on her lease and can then walk away and open her business in Galt.

I think what totally amazes me is that the planning commission say no, the people say no and still three out of five council members continue to say yes.

Although I may have a personal stake in this decision I have tried to understand this from a unbiased point and even then I can not get a hold of the reason we would consider bad growth. With Reynolds Ranch already approved and the fact that there are a large number of vacant building within the proposed project area there is no way this is a good decision. Wal-Mart already exist within a quarter mile of the new project and all they want is to expand their grocery lines on a corner that now has two other large grocery stores. You are not gaining resale dollars you are trading. Someone needs to help me understand why this make sense I just don't get it and therefore have a hard time supporting those I helped put in office. Please help me understand and for once do the correct thing that the people of Lodi have asked you to do.

Dan Wolcott
Juice It Up

Ann M. Cerney

900 W. Vine Street
Lodi, CA 95240

REC'D
2009 MAY 13

CITY CLERK
CITY OF LODI

Hand-delivered

May 12, 2009

Mayor Larry Hansen
City of Lodi
221 W. Pine Street
Lodi, CA 95240

Re: Lodi Shopping Center Project Hearing, May 13, 2009

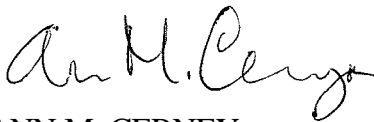
Dear Mayor Hansen:

This is written to express my continued opposition to the above-captioned project. My objection is based on the same grounds previously articulated at numerous City Council meetings and Planning Commission meetings.

Please consider my objection along with those of other opponents and adopt the NO PROJECT alternative.

Thank you for your attention to this matter.

Sincerely,



ANN M. CERNEY
Attorney at Law

Jennifer Perrin

From: Rebecca Wallace [rlwallace72@yahoo.com]

Sent: Tuesday, May 12, 2009 07:38 PM

To: Randi Johl; Susan Hitchcock; Bob Johnson; JoAnne Mounce; Phil Katzakian; Larry Hansen

Subject: Super center

Good Evening Everyone,

My name is Rebecca Wallace. I've worked for Wal-Mart for 12 years. I was a cashier for 1 year. I was promoted to a Customer Service Manager and held that position for 4 years. After that I needed a change of position/hours so I became a Garden Cashier. While I was in that position I was asked if I was interested in coming to Stockton and helping them open the Supercenter and work in Personnel. It was a huge opportunity for me and I took it. I was there 2004 to 2007. The best time of my career at Wal-Mart. I learned so much about FMLA, hiring, legal matters, etc.. The position I was in at Stockton opened in Lodi. I jumped at the chance to take it because it was closer to home and I was looking to the future when we get a Supercenter. I will have the knowledge and experience to know what needs to be done, what to look for in potential associates etc.. So I've been back in Lodi since 2007. I've added Community Involvement to my title since coming back. I'm telling you it has been a great feeling to give to the community I live in and my children are growing up in. I'm given a dollar amount each month to give out at a store level. I give in the form of Gift Cards, raffle baskets, pallets of water, and so on. I also have an amount each year to give out for grant money. We have given to World of Wonders, Big Brothers Big Sisters, Salvation Army, Relay for Life, Lodi Memorial, Foster Care facilities, and Make a Wish Foundation. We will be taking 10 foster kids to go see a Monarchs game on June 6th, something that those kids would not normally be able to see. This is just to name a few things. If we were to go Supercenter I would receive more money to give to the Community. The Stockton store receives \$5,000 more money than we do in grant money. We need that money for Lodi to help people with fundraisers and give to the organizations. Please consider this as just one reason the Supercenter should be built. We have great people who work here. I love going to work everyday. Please don't stop the growth of such a great place to work. Let it expand to what it needs to be. Also, another quick point. We are still hiring in this economy. Can many other places say that??

Thank you for your time,

Rebecca Wallace

Training Coordinator,

Community Involvement Coordinator..

#1789 Lodi, Ca

Since 1997 and counting!!

Jennifer Perrin

From: Don Mooney [dbmooney@dcn.org]
Sent: Wednesday, May 13, 2009 11:49 AM
To: Randi Johl
Subject: Wal-Mart Hearing

Attachments: 2009-05-13_11_15_54.pdf



2009-05-13-11-15
_54.pdf (2MB)...

Ms. Johl,

Attached is a letter on behalf of Citizens for Open Government regarding the hearing tonight. Also, please send me any recent submittals to the Council, including anything received this afternoon so that I may have an opportunity to review them prior to the hearing this evening.

Don Mooney
Law Office of Donald B. Mooney
129 C Street, Suite 2
Davis, CA 95616
530-758-2377
530-758-7169 (fax)

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95616
Telephone (530) 758-2377
Facsimile (530) 758-7160
dbmooney@dcn.org

May 13, 2009

VIA ELECTRONIC MAIL AND HAND DELIVERED

City Council Members
City of Lodi
221 West Pine Street
Lodi, California 95241-1910

Re: Consideration of the Lodi Shopping Center
State Clearinghouse No. 2003042113

Dear City Council Members:

On behalf of the Citizens for Open Government ("Citizens"), we urge you to deny the Lodi Shopping Center/Wal-Mart Supercenter project (or the "Project"). In October 2008, the Planning Commission determined that the Final Environmental Impact Report ("FEIR") for the Project was inadequate and denied certification under the California Environmental Quality Act ("CEQA"). On appeal by Wal-Mart and Browman Development Company, the City Council reversed the Planning Commission's decision and certified the FEIR as complete. The Project then came before the Planning Commission for a decision on the merits of the CEQA findings and the Project approvals themselves. In April 2009, the Planning Commission rejected the findings and denied the project on a split vote. After multiple appeals, the matter comes back before the City Council to make a number of necessary project specific findings under CEQA and for consideration of the Project itself. The City Council should reject the Project on the following grounds.

1. Alternative Analysis Was A Sham

The City Council is being asked to find under CEQA that it has been presented with a range of feasible alternatives and to reject each and every alternative. (Findings at 30-33.) However, the City Staff states that the City Council possesses little discretion regarding the project approvals. (Staff Report at Conclusion.) Given that the City maintains that it lacks discretion to consider alternatives, the City Council cannot make the findings regarding a reasonable range of alternatives.

2. Feasible Mitigation Opportunities Remain for Farmland Destruction

The City Council is being asked to find that no further feasible mitigation exists for significant project and cumulative loss of prime agricultural farmland. (CEQA

Findings at 2-3.) However, multiple additional feasible mitigation opportunities exists to further reduce significant impacts, including but not limited to increasing the ratio of conservation easements to greater than 1:1 (indeed, no argument to the contrary is presented) or locating previously disturbed prime lands to rehabilitate. The Council therefore cannot find that all feasible mitigation measures for significant impacts to agricultural resources have been exhausted.

3. No Rational Basis Exists to Find Urban Decay Less Than Significant

The City Council should examine closely the proposed CEQA finding (at 24-26) that approval of the Project will definitively cause no significant urban decay. This finding is wholly unwarranted by the record. First, the analysis is premised on economic conditions existing in 2006. Without a doubt, the present radically different conditions will exacerbate the economic impacts associated with the Project. Consumer spending is down, thus the pie, to be divided among downtown existing retailers and the new Wal-Mart Supercenter/retail space, has shrunk substantially. Not only are consumers holding onto their money but also the tough economic times have resulted in decreased consumer resources. Next, commercial credit markets are extraordinarily tight making existing business much less able to adapt to losses in revenue. Finally, the trade area has shrunk given new competitors in adjacent communities further reducing consumer dollars available to keep all existing business afloat. These sour economic conditions are exacerbated by the City recent approval and then redesign of the Reynolds Ranch project to place additional competitors near downtown and other retailers. Moreover, while the City intends to count over \$421,000 in tax revenue from retenanting the existing Wal-Mart site, it does not include in its economic/urban impacts analysis the additional draw away from existing business of the retenant retail space.¹

The City's economic consultant brushes aside all concerns with naïve speculation and presumptions. In a recent letter, BAE states that no change in its rosy economic analysis is necessary given the "unanticipated" economic downturn because the consultant considers it to be "difficult." (March 11, 2009 BAE letter at 6.) The City's consultant also speculates that the Wal-Mart will not be built for several years, the economy may improve in that time and all will be well. (*Id.* at 7.) Given the enormous consequences to the existing business and local residents, the Citizens would hope that prior to approving major new retail space that will have a confirmed adverse and substantial economic impact, that the City performed a good faith analysis under these new economic conditions even if it proves to be difficult. Simply relying on hopes that the economy will turn around provides no sound basis to affirmatively conclude that the Project will have no significant urban decay impacts.

¹ We also note that Project Conditions R(b) (restricting sale to a retailer) and FF seem to be contradictory as the latter requires sale of the existing Wal-Mart property without precondition as to who the purchasers may be.

To avoid taking a hard look at the economic impacts for the proposed Project, the City has consistently fallen back on "aggressive enforcement" of nuisance ordinances as its urban decay failsafe regardless of the impacts to its local businesses. (See e.g., March 11, 2009 BAE letter at 7). The evidence before the Council, however, renders this reliance displaced. For example, from the existing conditions decayed downtown and elsewhere, the City has not been at all successful in avoiding such conditions in the past. Moreover, the City points to no evidence the since its adoption several years ago of a resolution addressing code enforcement that it has "aggressively" remedied any existing conditions of urban decay. Next, the City is suffering from major budgetary shortfalls resulting in staff furloughs and hiring freezes. In times of reduced budgets and personnel, the City's hope of "aggressive" enforcement is not based on any hard facts indicating it has the capacity or changed past practice in flush times to address the likely business failures resulting from approval of the Project. In short, no conditions seem too adverse for the City's consultant to dismiss out of hand.

4. Global Warming Findings Inappropriate

The City Council is asked to find that "it is not required to conduct analysis of global warming." (CEQA Findings at 29.) The Citizens disagree. The City misused global warming and energy concerns in its revisions to the FEIR and cannot now duck the consequences of an adequate analysis. In addition, Council members are free to choose to seek a full disclosure in a CEQA context of the global warming impacts of the Project prior to making findings regarding its environmental impacts. In this vein, Wal-Mart's self-serving global warming "Climate Change" report should not be accepted as a substitute for a non-partial report whose preparation was overseen by staff and subject to rigorous public review and comment.

5. Statement of Overriding Considerations Inadequate

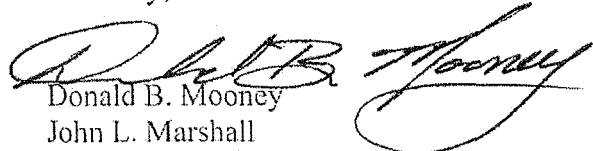
The City Council is being asked to override all allegedly significant but unavoidable environmental impacts and approve the Project based on a list of speculative project benefits. (CEQA Findings at 34-35.) In order to approve, a statement of overriding considerations, the City Council must be fully informed *its* to all impacts and **exhausted** all reasonably feasible alternatives and mitigation measures. As detailed above, the City has not exhausted available mitigation measures (e.g., for prime farmland), conducted an honest look at alternatives, or disclosed the full impacts of the Project (e.g., urban decay, global warming). Thus, on the environmental impacts side, the Council should refuse to override impacts until the City conducts the necessary analysis.

Turning to the benefits side (to be balanced against the disclosed environmental impacts), the City has not revealed to the Council the true nature of the economic consequences of the Project. The City claims a substantial sales tax increase expected from approval of the Project. However, as noted above, that projection was based not on

current economic conditions. Moreover, the impact to existing business will be more severe than anticipated under rosy economic times so the actual net economic benefit to the City has not been disclosed to the Council or the public. Moreover, the other benefits allegedly gained do not outweigh either the identified significant environmental impacts of the project or the adverse consequences to existing Lodi retailers and local businesses. For example, employment benefits cannot be tied to Lodi residents were as exiting job loses will adversely affect Lodi citizens. Similarly, do "infrastructure improvements" and it Wal-Mart as a "high quality" gateway to Lodi really outweigh the known consequences?

In conclusion, the City Council should reject the Lodi Shopping Center for the reasons set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald B. Mooney". The signature is stylized with a large, looping initial "D" and a long, sweeping underline.

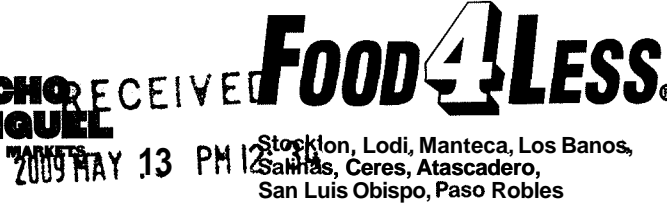
Donald B. Mooney

John L. Marshall

Attorneys for Citizens for Open Government



Stockton, Lodi



Randi Johl
City Clerk
221 W. Pine Street
Lodi, CA 95240

CITY CLERK
CITY OF LODI

May 13, 2009

**Subject: Lodi Shopping Center/Wal-Mart Supercenter May 13, 2009 City Council
Hearing. Disclosure Regarding Gift of Tickets**

Dear Ms. Johl,

PAQ Inc. (doing business as Food 4 Less and Rancho San Miguel supermarkets), is one of the appellants opposing the Lodi Shopping Center/Wal-Mart Supercenter project which the City Council will consider on May 13, 2009. PAQ, Inc. prides its self on positively impacting the communities it serves and demonstrating good corporate citizenship at all times. Due to the potential implications of the following events, and in abundance of caution, PAQ, Inc. feels necessary to disclose the following on the record.

PAQ, Inc. owns various season tickets to professional sporting events, including floor seats to Sacramento Kings' basketball games. On April 2nd Councilman Katakian's wife phoned PAQ, Inc.'s Marketing Director, Chris Podesto, and asked Mr. Podesto to provide tickets to an upcoming Kings' game. The Councilmember's wife and Mr. Podesto are distant relatives (grandparents of each were siblings). In response to her request, on April 3rd Mr. Podesto provided two front row tickets to Mrs. Katakian for the April 5th, 2009 Kings' home game at Arco Arena. The face value of each ticket provided was \$960. These tickets are often used for corporate marketing events. As PAQ, Inc. understands the situation, the tickets were ultimately used by the Councilmember's daughter and a friend.

Because the Councilmember's wife is a distant relative, Mr. Podesto didn't perceive the potential for a conflict of interest by giving Mrs. Katakian the tickets; however, upon subsequent review by our corporate advisors, PAQ, Inc. believes it necessary to disclose this information to you and the Council.

This situation is complicated by the fact that PAQ, Inc. filed an appeal of the Planning Commission's April 8th action regarding the proposed Supercenter – after providing the tickets to Mrs. Katakian. The Planning Commission reached a tie vote regarding whether to approve the project, and because no discussion was given as to how the tie would be resolved, PAQ, Inc. appealed.

Despite the embarrassment that may result to all involved, the company believes it prudent and necessary to disclose this matter in the midst of the appeal process before the Council. We desire to see this process operate in complete transparency and, accordingly, make this disclosure to avoid any problems that may arise from that gift. Unfortunately, this perfect storm of events



Stockton, Lodi, Manteca, Los Banos,
Salinas, Ceres, Atascadero,
San Luis Obispo, Paso Robles



makes the present situation entirely uncomfortable for PAQ, for Mi. Podesto, and we assume for the Councilmember and his family. This obviously was not Mr. Podesto's intent in agreeing to Mrs. Katzakian's request, and accordingly Mr. Podesto and PAQ, Inc., as a whole, are truly embarrassed by the situation.

We do not offer a legal conclusion on whether this transaction creates a conflict of interest precluding the Councilmember from voting on PAQ's appeal, but we do know that these events create a very uncomfortable perception of conflict and bias and, realize that this public disclosure may even trigger a backlash from the Councilmember to vote "against" this perceived conflict or bias. Accordingly PAQ, Inc. encourages the Councilmember to avoid the potential conflict and excuse himself from voting on the appeals.

I would appreciate your assistance in this matter and look forward to your advisement should it be warranted.

Thank you,



John F. Quinn

President/CEO

Jennifer Perrin

From: MABEL MARTIN [mmm32mom@yahoo.com]

Sent: Wednesday, May 13, 2009 01:46 PM

To: City Council

Subject: Wal Mart

I urge you to vote NO on Wal Mart. We do not need it or want it.

I am a Lodi resident.

Do the right thing. Vote NO

Mabel Martin

05/13/2009

Jennifer Perrin

From: Russ In Lodi [russe martin@yahoo.com]
Sent: Wednesday, May 13, 2009 01:52 PM
To: City Council
Subject: No on Super Wal-Mart, Lodi resident, thank you.

05/13/2009

Jennifer Perrin

From: Philip King [pking@sbcglobal.net]
Sent: Wednesday, May 13, 2009 01:58 PM
To: Randi Johl
cc: Brett S. Jolley; skingl @pacific.edu
Subject: Reply to Commenst on my earlier Report concerning the proposed Wal-Mart Supercenter in Lodi
Attachments: WM response May 2009 Lodi with vitas.pdf

Ms. Johl:

Please provide the attached memo to the City Council for tonight's hearing on the Lodi Shopping Center Project.

Thanks

Dr. Philip King

05/13/2009

May 13,2009

To: City of Lodi

From: Philip King, Associate Professor of Economics, San Francisco State University

Sharmila King, Associate Professor of Economics, University of the Pacific

Re: Response to Allegations in Recent Wal-Mart Submissions

Introduction

It is come to the authors' attention that Wal-Mart recently submitted documents to the City accusing the authors of exhibiting bias against Wal-Mart and being "consistently wrong" in urban decay analyses prepared for other communities."¹ These statements are untrue and inaccurate. Neither author is biased against Wal-Mart or any other particular retailer. However, we do have expertise in this field (as evidenced by the numerous communities in which we have been asked to consult on the impacts of various big-box retail projects including Wal-Mart, Home Depot, Lowe's, and Target). Dr. Philip King also served as an expert consultant to the City of Stockton on its adoption of a big box ordinance in 2007 and co-authored the 2003 economic impact study relied upon by the court in Bakersfield Citizens for Local Control v. City of Bakersfield to overturn Bakersfield's treatment of urban decay from two Supercenter-anchored shopping centers. Dr. Sharmila King is an Associate professor of Economics at the University of the Pacific in Stockton and has a strong understanding of the local economies of Stockton and surrounding communities in San Joaquin County, such as Lodi. Neither CBRE nor BAE can claim these credentials. And, unlike CBRE or BAE, the authors derive the vast majority of their incomes from their professorships, rather than from occasional consulting. Therefore contrary to the accusations, we are not professional "hired guns" like CBRE and BAE, but rather economists and academics concerned with what we perceive, in our professional opinions, as the over-retailing of smaller California communities, ultimately leading to significant negative economic climates in these communities. We are not anti growth. We are not even anti-retail. However, we do recognize that impacts from over-retailing a community will ultimately have a negative impact on both the economy and the environment. While we are not fortune-tellers, we do have experience analyzing the data and making fact-based predictions of urban decay impacts. In our professional opinions, this Project is just such an example of over-retailing that will lead to significant and unhealthy retail vacancies, increased store closings, and decay that must be addressed now rather than later.

Summary of Points

Our collective experience has established a strong foundation on the topic of big-box-related urban decay in California and from that knowledge the authors recognize that certain types of retail development is more likely to cause and contribute to increased vacancies and urban decay. At the forefront are "Supercenters" which based on their size,

¹ As we understand these documents were submitted to the City in March and April of this year, and were provided to Counsel for Lodi First by the City on April 29,2009.

hours of operation, and compilation of nearly every type of retail item (and several service items) tend to collect sales dollars from existing retail -- rather than by providing new retail spending -- in turn cannibalizing other stores in the community. This cannibalization, particularly in this economic climate, leads to business closures and potential urban decay. Of course, this must be determined on a case-by-case basis which the authors have done on several occasions. In this case, it is our professional opinion that the EIR process has not adequately addressed this impact because it fails to consider existing blight in Lodi (which will be exacerbated rather than alleviated by development of this project), omits relevant sales data, and significantly overstates the fiscal benefits of the project.

We believe the personal attack levied by Wal-Mart is inappropriate. To bolster this point, we demonstrate herein that our prior analyses of urban decay in cities in which Wal-Mart claims wrong, are in fact consistent with the current conditions on in those communities.²

The appendix to this memo contains a more complete response to these allegations.. Here are the key points:

- To our knowledge, neither CBRE nor BAE (Wal-Mart's preferred consultants) has ever concluded significant urban decay from a Supercenter or other big-box store anywhere in California.
- The Wal-Mart attach cherry-picked a few cities and caricatured our analysis. Nevertheless:
 - In **three of the five cities Wal-Mart discusses, a former Wal-Mart store was closed, just as one will be in Lodi. In all of three cities, the EIR's predicted that the Wal-Mart stores would be retenanted and our objections were rebuffed as "gloom and doom." All three of these former Wal-Mart stores are still closed and the shopping centers they anchor are crippled with vacancies and poor maintenance.**
 - These cities³ have seen increased vacancies, deteriorating downtowns, and urban decay.
 - Vacancies in Anderson have skyrocketed. Wal-Mart states that the Outlet center has benefited from the Supercenter, but vacancies have increased to 30%, the level at which a center is considered to be a "greyfield," in serious trouble. The center anchored by Safeway is close behind, with a 29% vacancy rate⁴ and even the center anchored by Wal-Mart has over a 20% vacancy rate. Urban decay has significantly increased in downtown Anderson. Most of the stores that the authors predicted would close have, in fact, closed, including the Holiday (Super)market.
 - An analysis we conducted two years ago in Hanford indicated that urban decay had significantly encroached on the downtown, which

² Interestingly, this attack is similar to one produced by CBRE in another community in 2007.

³ In the case of American Canyon the urban decay is in Vallejo next door, as Dr. Philip King predicted.

⁴ Vacancy rates are measured by the number of closed stores vs. total number of stores.

was once praised, and in centers anchored by the closed former Wal-Mart and the Monte (Super)market, closed after the Supercenter was built—adding over 330,000 square feet of empty and deteriorating space in Hanford. Since then, Mervyns has closed, Gottschalks will close along with many other stores.

- The Supercenter in American Canyon exacerbated urban decay in Vallejo as we predicted. Sonoma Blvd., just down the road from the Supercenter, is loaded with deteriorating shopping centers with high vacancy rates. The former Wal-Mart which relocated from Vallejo to American Canyon remains closed; a Mervyns is now closed, and dozens of other stores are closed. The vacancy rate is well above the 10% unhealthy threshold at most of these centers.
- Although we did not have time to visit Gilroy or Yuba City since receiving Wal-Mart's claims, we have spoken with knowledgeable sources in these communities who explain that vacancies have risen substantially and the downtown in Gilroy continues to deteriorate. Marysville, right next to Yuba City, suffers from serious urban decay exacerbated by Supercenters in Yuba City and Marysville.
- Finally, Wal-Mart's claim that Supercenters boost other business is fallacious. While Supercenters may boost *some* businesses, overall they take sales away from most businesses. And the "Navigant" report completed in late 2008 does not support Wal-Mart's conclusions.
- The original study for the City of Lodi was deeply flawed and was thrown out by a judge. We do not relish going over these issues again and again. Ultimately it is the city's decision as to whether to approve a Supercenter or not, but CEQA does require that a good faith, objective analysis be conducted so that citizens can make an informed and reasoned choice. As explained in our December 2008 report submitted to the Council (incorporated herein by reference), this requirement simply has not been satisfied.

Conclusion

Wal-Mart claims that we are biased while CBRE and BAE are somehow objective. It is clear that CBRE and BAE each has a long term relationship with many developers and big box stores, including Wal-Mart and that CBRE and BAE values these relationships. The developer pays for these reports and clearly expects a certain outcome.

This is not the purpose of CEQA or the EIR process. If Lodi wants a Wal-Mart Supercenter, that is ultimately up to the City and its citizens. This process has dragged on largely due to Wal-Mart's failure to accurately assess the situation. The original urban decay report was thrown out by the Court because it omitted one million square feet of new retail! That is a large oversight and inexcusable given the resources that CBRE had at its disposal.

As explained previously, the current EIR's urban decay analysis is also materially flawed in several ways: (1) It omits existing blight in east Lodi identified by the City Council and fails to accurately describe the economic environmental setting (2) it concludes "insufficient evidence" exists to determine whether significant urban decay will occur from the project (where, as here, Lodi has existing decay and blight, declining retail spending, and the EIR admits several store will close this is, in fact, substantial evidence that the likelihood of urban decay is significant); (3) the EIR omits the consideration of an additional 100,000 square feet of retail from the Reynolds Ranch project -- a significant omission representing a substantial percentage of eminent and approved Lodi retail development which will add to decay impacts in Lodi if this project goes forward, and (4) assumes the Project will generate significant tax revenues but relies on inconsistent and unsupported overstatements of sales tax benefits provided by the developer and Wal-Mart without considering the offsets from loss of revenue from other retailers in Lodi -- including closing the existing Wal-Mart store which, history shows, is likely to remain vacant (and non-tax-producing) for a number of years. These errors and omissions are not inconsequential. Instead, when the necessary information is included, the significance of the impact is realized and the EIR must address this through mitigation or overriding considerations.

The EIR and consultant reports fail to follow this requirement. Instead, the EIR plays "hide the ball" with the data to avoid findings of significance, to avoid mitigation, and ultimately to avoid disclosing the true impacts of the project.

The appendix to this memo documents these issues in more detail.

Appendix to Memo responding to Wal-Mart and CBRE

This appendix will respond in more detail to specific allegations made in the memo proffered by Wal-Mart and CBRE.

Response to Claims Regarding Urban Decay in other Communities: Anderson

Contrary to allegations made by Wal-Mart, vacancies and store closings have increased considerably in the years since the Supercenter was built. Wal-Mart argues that the outlet center across the street has benefited, yet the vacancy rate is now at 30%, a threshold rate which indicates a decaying center. Most of the stores we predicted would close have indeed closed. Overall business traffic is poor and many stores are struggling.



Figure 1: One of many closed stores at the Shasta Outlet Center in Anderson

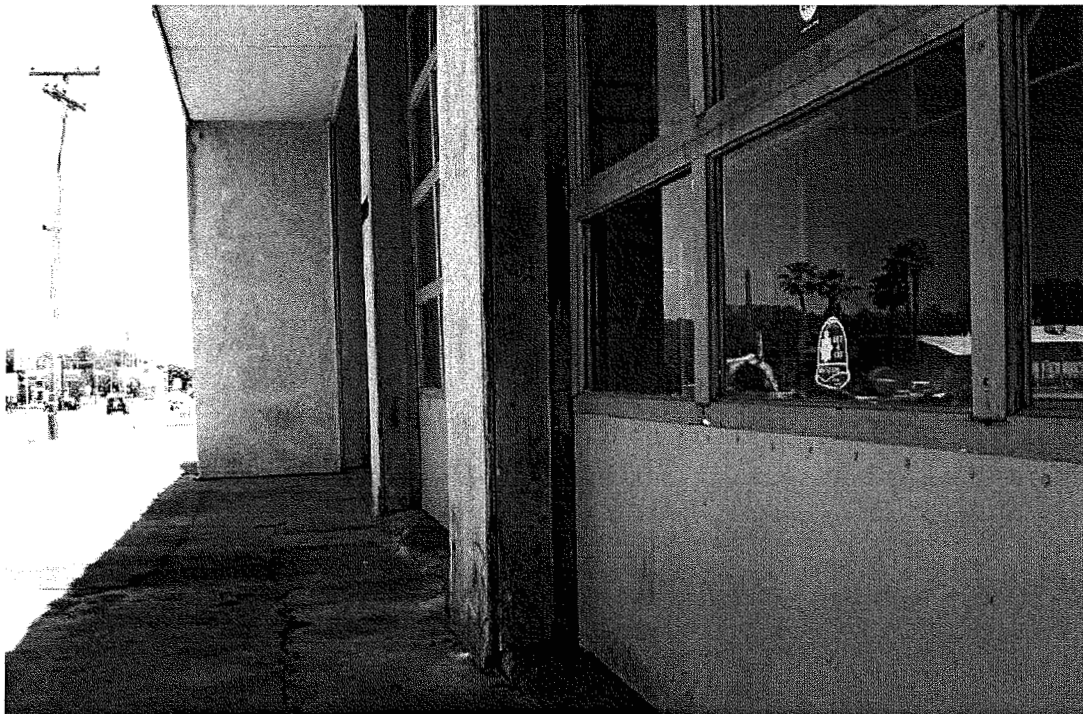


Figure 2: Downtown Anderson has struggled with many vacancies. Signs of urban decay near North and Center Street near downtown Anderson.



Figure 3: One of many closed stores downtown.



Figure 4: One of many closed stores at the center anchored by Safeway. Although the shopping center is not that old, it shows signs of poor maintenance already

Downtown Anderson is filled with marginal businesses such as thrift stores and check-cashing stores. The existence of these stores indicates very low rents, which leads to lack of maintenance and urban decay. The center anchored by Safeway has a 29% vacancy rate and many buildings already show signs of deterioration (see Figure 4) above.

Overall, Anderson is far from what WAL-MART has depicted. There are clear signs everywhere that stores are struggling due to sales displacement by the Supercenter.

American Canyon/Vallejo

Dr. King's original declaration for the Supercenter in American Canyon specifically mentions urban decay in Vallejo, which is immediately adjacent to the site, not in American Canyon. WAL-MART's memo implies that the declaration predicted urban decay in American Canyon, when it did not.

In Vallejo it is clear that numerous shopping centers on Sonoma Blvd. (the main shopping area just down from the Supercenter) are experiencing poor maintenance and high vacancies—the precursors of serious urban decay. Further, the condition of these stores has deteriorated significantly since the Supercenter was built several years ago.

Urban decay does not happen overnight. It is a long process, but once it sets in, it is very difficult to eliminate. CBRE claimed that in Lodi the blighted buildings just east of the downtown area were due to landlord neglect, but the story is simpler than that. Landlords only neglect property when it doesn't pay to maintain the property. In our opinion, this is the situation now in many shopping centers on Sonoma Blvd. in Vallejo.

The former Wal-Mart store, which CBRE claimed would be retenanted, has been vacant since its closing and vacancies in the shopping center it co-anchors are rising while maintenance is falling.



Figure 1: The Wal-Mart in Vallejo closed soon after the American Canyon store opened and has remained closed for years. Many stores nearby are also vacant and the shopping center is deteriorating.



Figure 2: The closed Mervyn's in Vallejo just down the road from the closed Wal-Mart. The cumulative impact of these closures is serious.



Figure 3: One of many closed stores on Sonoma Blvd.

Hanford

Dr. King's 2007 memo included a detailed description of store closings in Hanford at the time, which were substantial. Since then, Mervyns has closed and Gottschalks are slated to close and we are told that the downtown has shrunk further. It should also be pointed out that in 1985, downtown Hanford was chosen as "Best of the State" in a competition sponsored by the League of California cities. Hanford (unlike Lodi) has an ordinance which requires furniture stores to locate downtown, and this has helped slow the deterioration and shrinkage downtown, but has not prevented it.

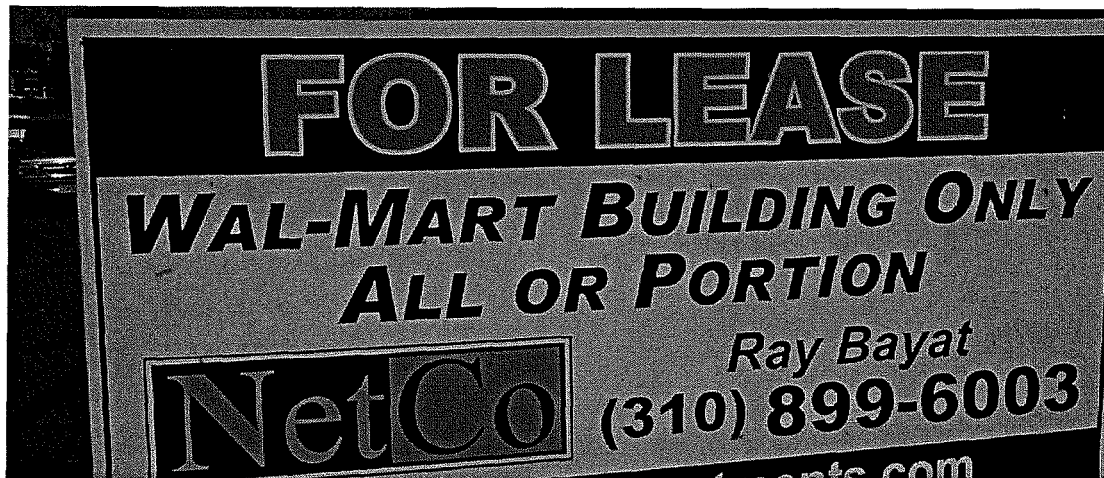
The full 2007 report is attached. Here are the most salient facts:

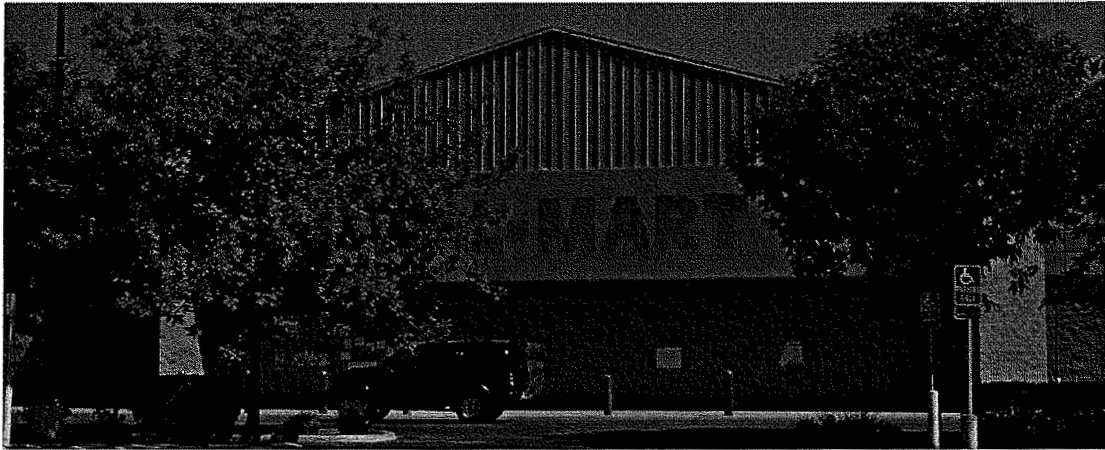
- The Monte Mart, a large (55,000 square foot) independent grocery store in the Hanford Towne Center, closed soon after the Supercenter opened and the store has not been retenanted. Proponents of the Supercenter have argued that the store would have closed anyway, but its sales were very healthy before the opening of the Supercenter; even if the owners had wanted to close the Monte Mart store, someone else could have been found to take over the business, a common practice when an owner of a successful business retires or closes a store. The entire shopping center anchored by the Monte Mart, is seriously underutilized and had an additional 15,000 square feet of vacant space in 2007.
- When the Supercenter opened, the existing Wal-Mart in the Centennial Plaza shopping center was closed. It is still vacant today (May 2009) and the rest of the shopping center is struggling.
- In 2007, although the core of Hanford's downtown contained many businesses, the periphery of the downtown area suffered from urban decay, with many closed and deteriorating businesses. Hanford's historic Chinese stores were badly deteriorating, despite efforts to retenant some of the stores.
- The 2007 memo took an inventory of closed stores in Hanford and estimated the total square footage of closed stores in downtown Hanford and at the two

shopping centers anchored. Over 330,000 square feet of vacant retail space existed, including a large number of closed and dilapidated buildings in or near downtown Hanford. Please keep in mind that Hanford is a small city, about 2/3 the size of Lodi or Elk Grove or 1/7 the size of Stockton, so this is a significant overhang of closed stores.



Figure 4: The Closed Monte Mart in Hanford





Figures 5 and 6: The old Wal-Mart has closed in Hanford and not been retenanted.

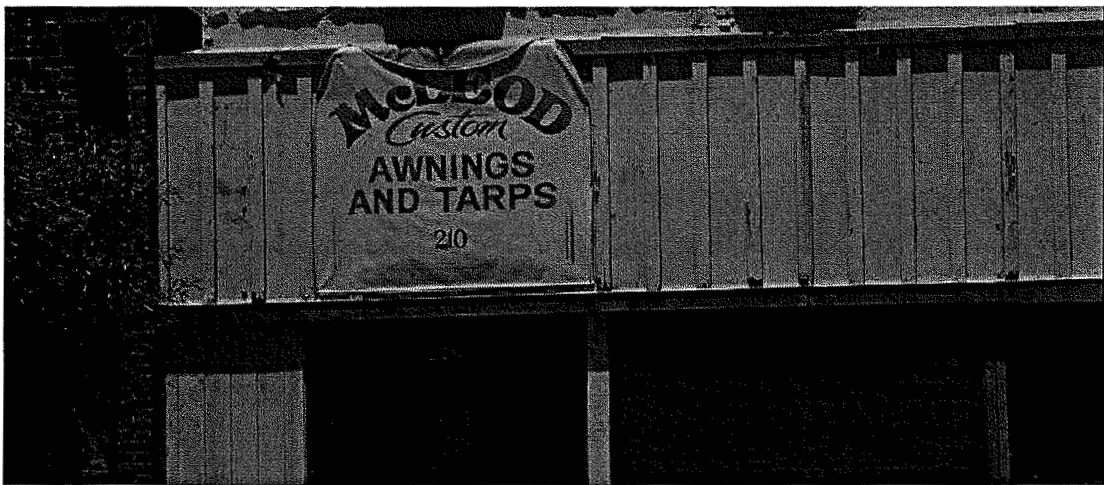
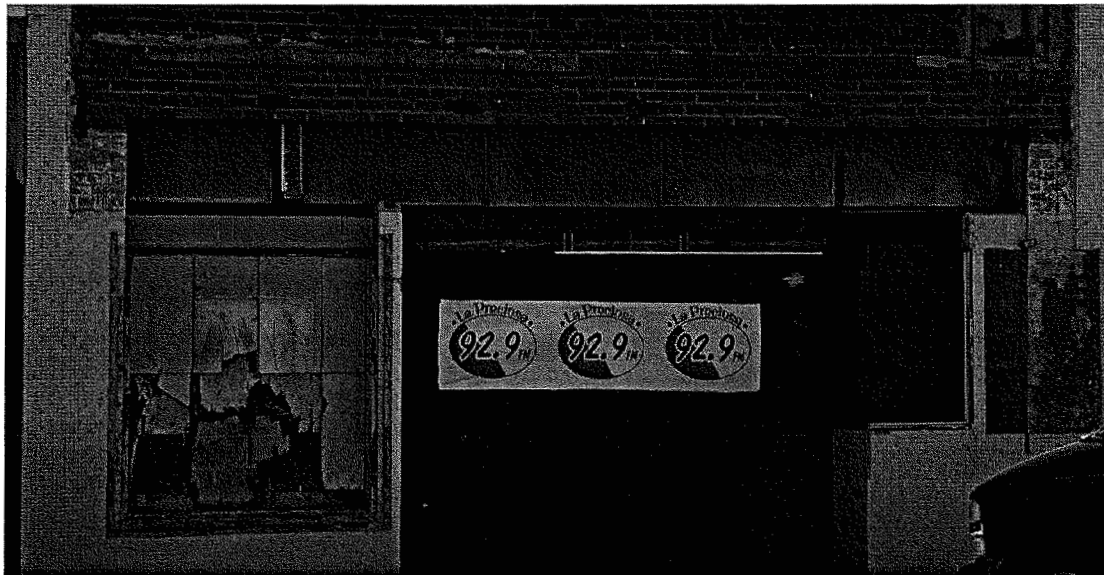


Figure 7: This old awning and tarp store in downtown Hanford was closed and falling apart.



Figures 8 and 9: More urban decay downtown.

Table 1: Closed Stores in Hanford with Estimated Square Feet (From 2007 Study)

Location	Est Square Feet
312 Sixth St.	1,000
210 Sixth	3,000
100 Sixth	6,000
116 Sixth	25,000
Fifth/Douty	2,000
601 Seventh St.	1,500
520 Seventh	2,000
410 Seventh	2,000
407 Seventh	1,000
333 Seventh	5,000
203 Seventh	8,000
125 Haris at Seventh	400
Seventh Douty	40,000
110 Seventh	3,000
120 Douty at Seventh	800
118 Seventh (closing)	1,500
Eighth (across from Sears)	2,000
Eigth and Irwin	4,000
312 Seventh (Old Sears)	40,000
130 Eight	1,000
Montemart	55,000
Space next to Monte Mart	2,000
2 stores in front of Monte Mart	15,000
Closed Wal-Mart	110,000
Store next to Wal-Mart	2,000
Total	333,200

Gilroy

We were not able to visit Gilroy. However, I spoke to people in the commercial real estate business downtown area in Gilroy continues to deteriorate and vacancies are rising. The closed Wal-Mart in Gilroy continues to be closed.

Yuba City

Vacancies in Yuba City have risen substantially including a closed Mervyns and a soon to be closed Gottschalks. However, like in American Canyon, the most significant decay has occurred in neighboring Marysville, which suffers from serious urban. These “twin cities” are adjacent and hence should be examined together, which the WAL-MART memo did not do.

Other Cities: Woodland

Since the WAL-MART memo has accused us of bias against Wal-Mart and cherry-picked examples of “successful” Supercenter development, we believe it is only fair to offer a couple of counterexamples—involving CBRE reports for Home Depot. In an urban decay report prepared for a Home Depot in Eureka this year, CBRE referred to the City of Woodland as a success story integrating big box stores.

Like Lodi, Woodland is a medium sized city in the central valley near a larger city (Sacramento as opposed to Stockton). Like Lodi, Woodland has experienced a substantial increase in retail over the last 5-10 years along with growth in residential development which has now slowed to a crawl. In addition to the Home Depot, a new Wal-Mart (non Supercenter), a new Costco, and a new Target (replacing an existing store) have been built and other stores are planned.

The downtown in Woodland is not thriving, as stated in the urban decay report prepared by CBRE, but has continued to stagnate even in the boom years of 2000-2004. The “antique stores” that the EIR mentioned are in fact, second hand stores which have very low sales per square feet and operate in low rent buildings which have continued to deteriorate over the past ten years. Other retail in Woodland has also stagnated and many stores are now stagnating.

The western end of Main St. in Woodland—Main street is essentially “downtown” Woodland—has a large number of store closures and deteriorating stores and shopping centers. At one of these centers on 117 W. Main in Woodland Dr. King was physically threatened and escaped by car. He was pursued for 25 minutes (and dialed 911) before the police were able to intervene (in Sacramento). Make no mistake, this is a dangerous area. We have been shopping in Woodland regularly for 12 years and used to visit a dentist not far from this area, so we were shocked.



Figure 10: This store in central downtown Woodland is one of many stores that has been closed and “For Lease” for some time now. This is the beginning of urban decay.



Figure 11: The former Long John Silver's on Main St.. in Woodland is now boarded up.

Most significant, the County Fair mall in Woodland, which before the recent developments, was the main regional shopping mall in Woodland is rapidly becoming a “ghost mall.” On a recent visit I counted **30+** vacancies out of a total of 65-70 spaces —indicating an almost 50% vacancy rate. In addition to obviously any stores still had merchandise but were closed midday indicating they would probably close soon. The mall was anchored by Mervyns and Gottschalks. The Mervyns has closed and Gottschalks will follow soon. The former Target store also left. The spec was retenanted by a Burlington coat factory. Significantly, this store fronts main entrance is outside of the mall.



Figure 12: One of many, many closed stores at the County Fair Mall in Woodland.

Eureka

CBRE also recently prepared an urban decay report in Eureka. The report:

- Systematically ignored urban decay and 127 vacancies in central Eureka. (Eureka is a small City.)
- Dismissed severe problems at Eureka’s Bayshore Mall, which is now in bankruptcy.
- Assumed that there would be no leakage outside of Humboldt County—that is that folks would do all of there shopping in the County, even though it does not contain a single, GAP, Macy’s, Nordstrom, Ann Taylor, or many other mainstream stores that can be found across the US.

- Despite CBRE's Omissions, the EIR concluded that in many retail categories it will take more than 10 years to "mitigate" impacts, yet CBRE concluded there would be no urban decay impacts.



Figure 13: This store on 15th Street in Eureka is boarded up and starting to deteriorate.

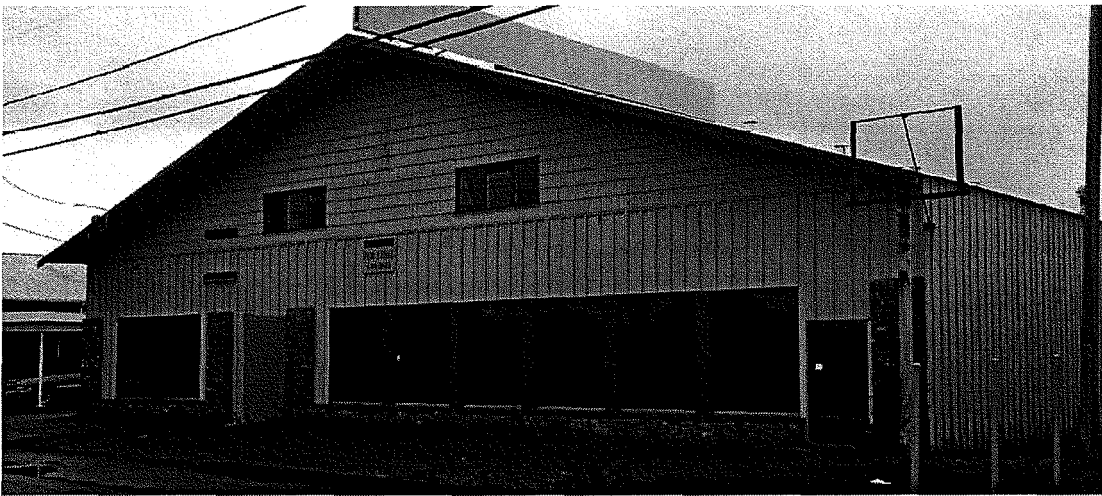
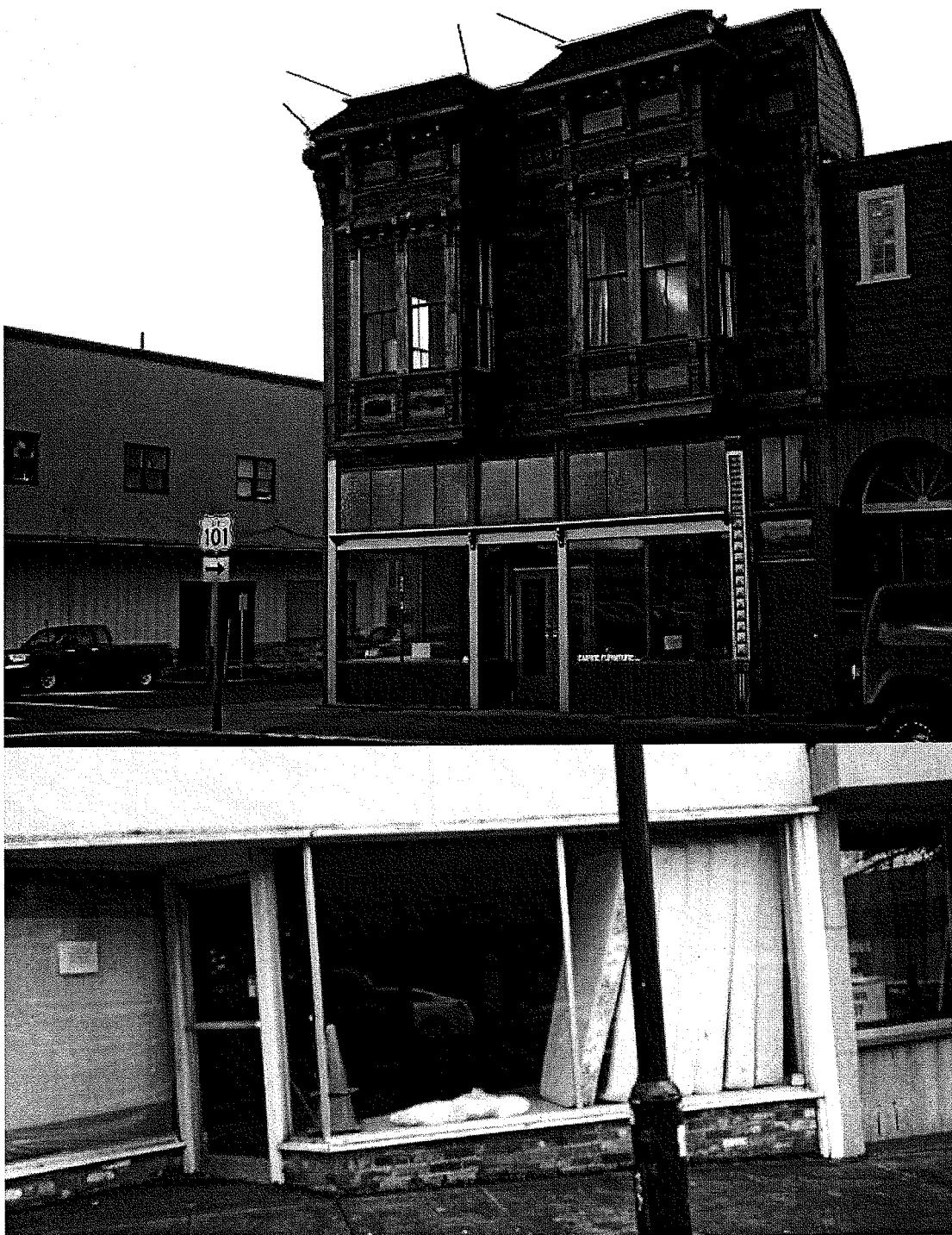


Figure 14: This store at 3d and Jacobs in Eureka is vacant and suffering from lack of maintenance.



Figures 15 and 16: Empty storefronts on 5th Street in Eureka showing signs of lack of maintenance—without tenants and with few prospects of future, landlords have little incentive to upkeep property.

Vacancies at Bayshore Mall in Eureka

The Eureka EIR and urban decay report prepared by CBRE briefly discussed the Bayshore mall and discussed some of the major vacancies, but the entire discussion served to dismiss what is clearly a failed shopping center where conditions are going from bad to worse. Since the report was filed, the Bayshore Mall's owner, General Properties, has filed for bankruptcy and this bankruptcy includes the Bayshore Mall.

The Bayshore mall has lost most of its anchor tenants and prime draws—Old Navy, the Gap, Mervyns and now Gottschalks has declared bankruptcy and will leave Bayshore as well. This leaves very few anchor tenants and the remaining ones such as Sears and Borders have also been experiencing difficulty and may very well close.. **A very** partial list of store closings includes the following stores:

1. Arbys
2. Sweet River Grill.
3. Campost Casual
4. Old Navy.
5. JC Penney outlet.
6. Site for Sore Eyes.
7. Vitamin World.
8. Suncoast movies.
9. Rocxco furniture.
10. Hot dog on a stick.
11. Gottschalks other store outlet they own in the mall.
12. Bayshore mall cinema
13. KB toys.
14. Candy factory
15. Wilson's Leather

Indeed, people have described the mall as a “ghost town.”



Figure 17: One of many storefronts closed in the Bayshore Mall

Conclusion

Wal-Mart claims that we are biased while CBRE is somehow objective. It is clear that CBRE has a long term relationship with many developers and big box stores, including Wal-Mart and that CBRE values this relationship. The developer pays for these reports and clearly expects a certain outcome.

This is not the purpose of CEQA or the EIR process. If Lodi wants a Wal-Mart Supercenter, that is clearly up to the City and its citizens. This process has dragged on largely due to Wal-Mart's failure to accurately assess the situation. The original urban decay report was thrown out because it omitted one million square feet of new retail! That is a large oversight and inexcusable given the resources that CBRE had at its disposal.

The Retail Bubble

A beggar-thy-neighbor approach has led to serious land use distortions in the United States that we have known about for years, but have so far failed to do anything about.

A NEW BUBBLE IS POPPING—and as usual it was avoidable. But unlike the housing bubble, many local communities and developers—not residents—played the key role in creating America's retail bubble. Reports by Property & Portfolio Research (PPR), based in Boston and London, show a rapidly rising number of shopping center vacancies around the country. PPR predicts that overall retail vacancy rates will reach 12.5 percent—one out of every eight square feet (3,244 sq m) of available retail space.

This may not sound so bad, but as reported by *GlobeStreet.com*, it represents overall about 1.2 billion square feet (3,148 million sq m) of space, or roughly 40 square miles (103.6 sq km) of empty and abandoned stores and another 100 square miles (259 sq km) of unused parking lots. Retail rent growth is projected to decline by more than 5 percent in 2009 before recovering in 2010, and retail capital value losses may approach 20 percent. This catastrophe did not just happen because of the economic downturn or the housing bust that began in 2007, although these triggered it. The trend actually has been building for years and is only now becoming widely recognized.

A troubling new aspect is that much of the new vacant retail space is in newer shopping centers in outer suburban communities where housing construction has slowed dramatically—not in older obsolete space. The old rules that retail follows rooftops has become wildly distorted as retail development followed the anticipation of future rooftops—a

future that is now greatly delayed or might never come at all in some fringe areas, not only because of the short-term housing bust, but also because of long-term demographic changes regarding where people want to live.

Unlike past experiences, the end of the current housing downturn may not be followed by another housing boom at the fringe—at least not like the fast upturn we have gotten used to. The market may not bail out bad decisions on the part of developers and communities anytime soon, because more and more people may look for alternatives to a large single-family house at the fringe that requires long, congested drives to the grocery store or to work when gasoline prices increase again and as our highway infrastructure continues to deteriorate.

Even if another boom does eventually start up at the fringe, the type of retailing (and housing) required will likely differ substantially from what was built there in the past. Isolated, single-use strip centers and stand-alone big boxes accessible only by automobile in distant locations will seem misguidedly quaint.

The intense competition among jurisdictions for commercial tax revenues is another cause of the problem. Communities often do not care that there is no net demand for additional retail space. When they zone too much land for retail or approve too many retail centers, they are interested primarily in ensuring an increasing commercial tax revenue stream for themselves

to pay for the services that a burgeoning population requires. That their neighbor's older centers may go vacant is not of much concern.

This beggar-thy-neighbor approach has led to serious land use distortions that we have known about for years, but that we have so far failed to do anything about. It is easy to say that communities should cut back on the land they zone for retailing and stop approving so many unneeded shopping centers, but this will require state involvement regarding regional planning and taxation policies to succeed.

What communities can do is to reorient their retail development regulations to create more sustainable retailing patterns. Communities must demand sustainable mixed-use development, higher commercial densities, green leasing, more redevelopment of obsolete spaces, and retail centers that make sense regionally as well as locally.

The world has changed fundamentally, and the current crisis should be a wake-up call for us to step back and address the serious shortcomings of our present retail land use and development policies, which have led to the industry's current overbuilding, obsolescence, and financial disaster. Otherwise, we will simply be laying the groundwork for the next destructive boom-bust retail cycle, and our goal of creating more livable and sustainable metropolitan communities will slip that much further away. UL



MICHAEL BEYARD is a senior resident fellow at UL and ULW at the Bauhaus chair for urban and environmental.

PHILIP G. KING

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E-mail: pking@sbcglobal.net

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Education:

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Fields: Applied Microeconomics, Economic Development, International Economics
Dissertation: Bargaining between Multinational Corporations and Less Developed Countries over Mineral Concessions Contracts.

May, 78 **B. A. in PHILOSOPHY & ECONOMICS** **WASHINGTON UNIVERSITY**
Nominated to Omicron Delta Epsilon (Economics Honor Society.)

Work Experience:

1/06-present	ASSOCIATE PROFESSOR	SAN FRANCISCO STATE UNIVERSITY
9/02-12/05	CHAIR, ECONOMICS DEPARTMENT	SAN FRANCISCO STATE UNIVERSITY
9/93-present	ASSOCIATE PROFESSOR	SAN FRANCISCO STATE UNIVERSITY
9/87-9/93	ASSISTANT PROFESSOR	SAN FRANCISCO STATE UNIVERSITY
9/83-5/85	ASSISTANT PROFESSOR, ECONOMICS	S.U.N.Y. at CORTLAND

Policy Papers prepared for Government and Non-Profit Organizations:

Contributed Economics portion of Regional Sediment Master Plan for BEACON (Beach Erosion Authority for Clean Oceans and Nourishment—Santa Barbara and Ventura Counties), February 2009, with Noble Consultants.

ESTIMATING THE POTENTIAL ECONOMIC IMPACTS OF CLIMATE CHANGE ON SOUTHERN CALIFORNIA BEACHES, prepared for the California Energy Commission (Energy Commission) and the California Environmental Protection Agency (Cal/EPA), with Linwood Pendleton, Craig Mohn, D. G. Webster, Ryan K. Vaughn, and Peter Adams.

Prepared for the City of Stockton: Economic Analysis of A Proposed Ordinance to Limit Grocery Sales at Superstores in Stockton, California, May 10, 2007

Contributed Economics Portion of "The ARC GIS Coastal Sediment Analysis Tool: A GIS Support Tool for Regional Sediment Management Program: White Paper, Draft Technical Report for U.S. Army Corps of Engineers, by Ying Poon (Everest Consultants), Los Angeles District, April 2006.

Contributed Economics Portion of "Coastal Sediment Analysis Tool (CSBAT) Beta Version--Sediment Management Decision Support Tool for Santa Barbara and Ventura Counties," Draft Technical Report for U.S. Army Corps of Engineers, by Ying Poon (Everest Consultants), Los Angeles District, June 2006.

"The ArcGIS Coastal Sediment Analyst: A Prototype Decision Support Tool for Regional Sediment Management, John Wilson et. al., USC Geography Department, 2004 (contributed economic analysis for paper).

"The Economic of Regional Sediment Management in Ventura and Santa Barbara Counties," prepared for the California State Resources Agency, Final draft (refereed) , Fall 2006, prepared for the Coastal Sediment Management Work group (CSMW).

"The Potential Loss in GNP and GSP from a failure to Maintain California's Beaches," with Douglas Symes, prepared for the California State Resources Agency, 2002, <http://userwww.sfsu.edu/~pgking/pubpol.htm>.

"The (Economic) Benefits of California's Beaches," prepared for the California State Resources Agency, 2002, <http://dbw.ca.gov/beachreport.htm>.

"The Economic and Fiscal Impact of Beach Recreation in San Clemente," presented as part of Hearings on Congressional Appropriations for California Coastal Projects, US House of Representatives, April 2002. Also completed similar projects for Cities of Carlsbad, Caspinteria, Encinitas, and Solana Beach.

San Francisco's Economic Growth 1995-2000: The Fiscal Health of the City and Implications for the Future," prepared for the San Francisco Committee on Jobs Summer 2001. This report was widely cited in the San Francisco press including front page articles by the *Chronicle* and *Examiner*.

"The Demand for Beaches in California," prepared for the California Dept. of Boating and Waterways, Spring 2001.

"Cost Benefit Analysis of Shoreline Protection Projects in California," prepared for the California Dept. of Boating and Waterways, Spring 2000.

"The Fiscal Impact of Beaches in California," prepared for the *Public Research Institute*, San Francisco State University, Fall 1999, available at <http://online.sfsu.edu/~pgking/beaches.htm>.

"An Economic Analysis of Coastal Resources on the Majuro Atoll," prepared for the *United Nations Development Program* Project MAS 95/001/D01/99 and the *Majuro Atoll Local Government*, September, 1997.

"The Economic Impact of California's Beaches," prepared for the *Public Research Institute*, San Francisco State University, Summer, 1997 (with Michael Potepan.)

"The Revenue Impact of the Proposed Marine Link Pipeline System in Richmond, California," prepared for the *Public Research Institute*, San Francisco State University, Spring, 1997 (with Ted Rust.)

"The Economic Impact of California's Ports and Harbors," prepared for the *Public Research Institute*, San Francisco State University, Spring, 1997 (with Ted Rust).

- Books:** *International Economics and International Economic Policy*, 5th Edition, McGraw-Hill, 2009.
International Economics and International Economic Policy, 4th Edition, McGraw-Hill, 2004.
International Economics and International Economic Policy, 3rd Edition, McGraw-Hill, 2000.
International Economics and International Economic Policy, 2nd Edition, McGraw-Hill, 1995.
International Economics and International Economic Policy, 1st Edition, McGraw-Hill, 1990.

Published Papers:

"Potential Loss in GNP and GSP from a Failure to Maintain California's Beaches", Fall 2004, with Douglas Symes, *Shore and Beach* (**Refereed**).

"Do Beaches Benefit Local Communities?: A Case Study of Two California Beach Towns," Fall 2002, *Proceedings of the Conference on California and the World Oceans*.

"The Economic Value of California's Beaches," Fall 1997, *Proceedings of the Conference on California and the World Oceans* (with Michael Potepan.)

"William Simon: Treasury Secretary," in *Biographical Dictionary of the United States Secretaries of the Treasury: 1789-1995*, edited by Bernard Katz and C. Daniel Vencill, Greenwood Press, 1996.

"The Multinational Corporation: Pro and Con," in *International Economics and International Economic Policy*, McGraw-Hill, 1990.

"Negotiations over Mineral and Petroleum Contracts in Developing Countries: a new explanation," Winter 1987, *Journal of Economics and International Relations*.

"A Political Theory of MNC-LDC Negotiations over Mineral Concessions Contracts," 1988, *International Interactions*.

Public Testimony:

Testified and prepared report to the California Coastal Commission in San Diego on the economic loss due to a proposed seawall at Las Brisas, Solana Beach, California.

SHARMILA KUMARI KING

PERSONAL

University Address: Department of Economics
University of the Pacific
3601 Pacific Avenue
Stockton, CA 95211

E-mail: sking1@pacific.edu
Office Phone: (209) 946 2293

Citizenship: US and UK

EDUCATION

- Ph.D. Economics, University of California, Davis, 2001
Dissertation: The Formulation of Monetary Policy and the Transmission Mechanism in Europe
(Chair: Professor Kevin Hoover)
Major Fields: Monetary Economics, International Finance, and Econometrics
- M.A. Economics, San Francisco State University, San Francisco, 1996
- B.A. Economics (Honors), University of York, York, England, 1992

TEACHING APPOINTMENTS

Associate Professor, University of the Pacific, *Fall 2007-present*

Assistant Professor, University of the Pacific, *Fall 2001-Spring 2006*

- Introductory Macroeconomics (ECON 55, ECON 55H)
- Intermediate Macroeconomics, Theory and Policy (ECON 103, ECON 103L)
- Money and Banking (ECON 141)
- International Finance (ECON 123)
- Computer Applications (ECON 161)
- Mentor2

PAPERS and BOOKS

- “Bank Efficiency and the Effectiveness of Monetary Policy” with Michael Jonas, *Contemporary Economic Policy*, Vol. 26, No. 4, October 2008
- Philip King and Sharmila King *International Economics and Globalization, and Policy: A Reader*, 5th ed. McGraw-Hill Publishers, 2008
- Sharmila King “China’s Controversial Exchange Rate Policy” in *International Economics and Globalization, and Policy: A Reader*, 5th ed. McGraw-Hill Publishers, 2008
- Sharmila King “Currency Boards” in *International Economics and International Economic Policy: A Reader*, Philip King and Sharmila King (Eds.), McGraw-Hill Publishers 2005
- Philip King and Sharmila King *International Economics and International Economic Policy: A Reader*, McGraw-Hill Publishers, 2005

- “Do Symmetric Shocks Matter? The Monetary Transmission in the Euro Area,” with Philip King, *Jean Monnet Chair Conference Proceedings*, 2003
- “Tax Evasion and Equity Theory: An Experimental Investigation”, with Steven Sheffrin, *International Tax and Public Finance*, 9, 505-521, August 2002
- “The Effects of Off-Balance Sheet Lending and Monetary Policy Outcomes in the U.S.” *Manuscript*.
- “A Lending Channel in Europe: Evidence from Bank Balance Sheets”, *under revision*.

PRESENTATIONS

- “Bank Efficiency and the Effectiveness of Monetary Policy” at the *Western Economic Association International* Conference, Vancouver, July 2004
- Economics Department Colloquium Presentation: “Bank Efficiency and the Effectiveness of Monetary Policy”, April 2004
- “Do Symmetric Shocks Matter? The Monetary Transmission in the Euro Area,” at the Jean Monnet Chair “Regional Integration Compared” Conference in Bordeaux, France, July 2003
- “Do Symmetric Shocks Matter? The Monetary Transmission in the Euro Area,” at the *Western Economic Association International* Conference in Seattle, July 2002
- Economics Department Colloquium Presentation: “Do Symmetric Shocks Matter? The Monetary Transmission in the Euro Area,” April 2002
- “A Credit Channel in Europe: Evidence from Firm Balance Sheets” presented at the *Western Economic Association International* Conference in Vancouver, July 2000

UNIVERSITY SERVICE

- College of Pacific Council -present
- College of Pacific: Curriculum Committee 2007-2008
- Department of Economics Webmaster, Fall 2004-Fall 2008
- Omicron Delta Epsilon Faculty Advisor 2006-2008
- The Pacific Investment Group Faculty Advisor 2007–present
- College of Pacific: Courses and Standards 2003-2005
- University Parking Taskforce Committee 2004

PROFESSIONAL SERVICE

- Peer Reviewer for *Southern Economic Journal*
- Economics Analysis of MOA between the City of Stockton and the Sierra Club, 2008
- Economic Analysis of a Proposed Supercenter Wal-Mart in Tracy, California 2006
- Economic Analysis of a Proposed Supercenter Wal-Mart in Stockton (Eight Mile Road), California 2005
- Economic Analysis of a Proposed Supercenter Wal-Mart in Lodi, California 2005, 2008
- Book Review on Krugman and Well’s *Macroeconomics*, Worth Publishers, 2004
- Chapter Review Stiglitz and Walsh’s the Phillips Curve in *Principles of Macroeconomics*, W. W. Norton Publishers, 2004

COMMENT LETTERS RECEIVED BY CITY CLERK'S OFFICE

At or after the public hearing on
May 13, 2009

Jennifer Perrin

From: Randi Johl
Sent: Thursday, May 14, 2009 12:54 PM
To: Jennifer Perrin
Subject: FW: Wal-Mart Supercenter-Vote NO!

_-----Original Message-----

From: Butch England [mailto:laffert67@yahoo.com]
Sent: Wednesday, May 13, 2009 3:38 PM
To: City Council
Subject: Fw: Wal-Mart Supercenter-Vote NO!

Just as a reminder of a letter I sent last December. Downtown Lodi and the Lowe's shopping center have lost businesses and there are still plenty of vacancies at Reynolds Ranch. Please take into consideration the EIR. I am not a member of any activist organization just a concerned private citizen on this matter.

thank you,

Laffert "Butch" England
1940 Providence Way
Lodi, CA 95242

--- On Wed, 12/10/08, laffert@prodigy.net <laffert@prodigy.net> wrote:

> From: laffert@prodigy.net <laffert@prodigy.net>
> Subject: Wal-Mart Supercenter
> To: lhansen@lodi.gov
> Cc: jmounce@lodi.gov, bjohnson@lodi.gov, pkatzakian@lodi.gov, hitchcock@lodi.gov, letters@lodinews.com
> Date: Wednesday, December 10, 2008, 4:15 PM
> Dear Council members,
> my name is Laffert "Butch" England. I am a
> registered voter and have lived in Lodi for over 7 years. I
> am writing to express my opposition to the Wal-Mart
> Supercenter.
> When my wife and I got married in 2001, we were looking for
> a place to live that would suit both our commutes. We were
> going to look at three cities but after just going to Lodi,
> we knew it was (and is) the place for us. The locals call
> it "livable lovable Lodi" for good reason. Lodi,
> to me, is a unique city with its controlled growth, wine
> industry, and downtown ambiance. I am very comfortable here
> even wishing that I had grown up here instead of Antioch.
> If you want to look at how to ruin a community, look there
> with its oversized unplanned growth.
> This leads me to the Wal-Mart Supercenter. Lodi will lose
> much of its charm if this opens. More and more downtown
> businesses will close up only to be replaced with either
> nothing or a bunch of "antique" shops. Martinez
> has a cute downtown but it's mostly "antique"
> shops.
> I don't want to see Lodi become just like any other
> city here in the San Joaquin Valley. I would like to see
> Lodi keep its unique aura. Sadly, a Supercenter would take
> that away. With many of the towns strip malls already
> losing tenants (Lakewood comes to mind), I think the
> Supercenter would compound this problem.

> I understand the need for revenues. Let's get creative
> and find some other means. I, for one, will NEVER set foot
> in the Supercenter.
> I will admit to you that I am no fan of Wal-Mart to begin
> with due to their business tactics with vendors and
> underhanded labor practices.
> But even if I did like Wal-Mart, I still don't like
> what it will do to this town if they get their Supercenter.
>
>
>
> Laffert "Butch" England
> 1940 Providence Way
> Lodi, CA 95242
> 209-367-4585
> 209-663-7485 (cell)

Jennifer Perrin

From: Randi Johl
Sent: Thursday, May 14, 2009 12:55 PM
To: Jennifer Perrin
Subject: FW: No to the Walmart Supercenter

---__Original Message-----

From: Maria [mailto:zentara@yahoo.com]
Sent: Wednesday, May 13, 2009 3:07 PM
To: City Council
Subject: No to the Walmart Supercenter

Good afternoon,

I know at tonight's Lodi City Council meeting you will be considering approving the Walmart Supercenter project. This is a bad idea and I am again asking you all to vote no. Our city continues to loose business downtown, and the shopping center at Lowe's can't even fill it empty spaces. If the project is approved then what are we going to do with the empty Walmart store across the street? Downtown is looking like a ghost town and even Starbucks is leaving.

The Reynolds Ranch project is big enough for our town at this time. Let's get that up and running first. We are stretching ourselves too thin. Please listen to the voters of Lodi rather than the special interests of Walmart. The voters want a small town feel. Not to mention I don't see how Caltrans is going to approve the project with its potential impact on highway 12.

PLEASE VOTE

Thank you,
Maria England
1940 Providence Way
Lodi, CA 95242

Brett S. Jolley
bjolley@herumcrabtree.com

May 13, 2009

VIA HAND DELIVERY

Mayor Larry Hansen
Honorable Members of the Lodi City Council
City of Lodi
221 W. Pine Street
Lodi, CA 95241

Re: Appeals of Planning Commission's Actions Regarding Lodi Shopping Center Project

Dear Mayor Hansen and Honorable Members of the Lodi City Council:

This office represents Lodi First in its appeal of the Planning Commission's actions on the Lodi Shopping Center Project ("Project"). Lodi First incorporates its prior objections to the EIR and the Project herein, as well as those of others throughout the administrative process, but also addresses the following three issues in this letter:

1. No Action by Planning Commission

The Council lacks jurisdiction to consider the appeals. Lodi Municipal Code § 17.88.030 A., regarding appeals to the Council, states, "The council may choose to review a **decision** rendered by the commission."

This condition precedent has not yet occurred and the Council cannot yet consider the merits of the project because the Planning Commission did not make a "decision" on the Project. During the Planning Commission hearing a motion to approve the Project as presented failed 3-3. Thereafter, a Commissioner attempted to discuss the matter further but was cut off by staff, who advised that the 3-3 tie resulted in a denial and the hearing was complete. This conclusion is incorrect.

Although a 3-3 tie on a motion to approve cannot be an approval of that *motion*, such result is not a decision to deny of the entire application. Accordingly, the process was truncated at the Planning Commission. Specifically, Lodi First had advocated for an additional, independent fiscal impact study and Citizens for Open Government had advocated for the Commission to approve the "no-project alternative." By truncating

the process, the Commission never made a final decision, took action, or established an irreconcilable deadlock in reaching any decision. In short, the decision making process was not exhausted to give rise to an appeal. To the extent the Council is asked by the proponents to reverse the Commission's decision, no final decision occurred and the appeal is premature.

Moreover, this truncated process leaves the Council without the benefit of knowing the Planning Commission's final decision or reasoning on this project. This result prejudices the approval process. To the extent the Commission were to adopt one of the project alternatives and articulate its reasons for doing so, order the preparation of an independent fiscal impact study, or add conditions to the Project, the Council would be reviewing the appeal with the benefit of that information. Likewise, were the Commission to affirmatively deny the project and make findings to that effect (an option not allowed in the process), the Council and the public would have a better understanding on the record of the basis for denial which would influence the decision on appeal. Indeed, "at 'every level of the planning process' - the Legislature - 'recognizes the importance of public participation.'" *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 891 [holding fast track permitting process that provided notice of Council Hearing without benefit of Planning Commission recommendation violated public participation and informed decision making principles.]

Simply stated an appeal may only be taken from a decision and no decision was made by the Commission. Accordingly the Council lacks jurisdiction to consider the appeals and the project cannot be approved.

2. Project Design

The Project violates the Lodi Major Retail Design Ordinance three material ways.

First, Section 17.58.030 B.I. states "Facades greater than one hundred feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least twenty percent of the length of the facade. No uninterrupted length of any facade shall exceed one hundred horizontal feet." The design plans attached to the staff report reveal that the south facade of the Supercenter is over 300' feet in length and is unbroken as required by the ordinance. The southern portion of the rear (west) facade also appears to have an uninterrupted wall of greater than 100'. The Staff report even notes "The west and south elevations do not feature the same detailed architectural treatment. The west (rear elevation) is a continuous wall with little architectural treatment to breakup the elevation of the building...The southern elevation will feature nearly identical architectural treatment as the west elevation."

Second, Section 17.58.030B.2. provides "Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than sixty percent of their horizontal length." The rear (west)face of the Supercenter abuts (faces) Westgate Drive but does not appear to have any such features identified above. These requirements also to apply to all sides of a building visible from adjoining properties (Section 17.50.090) – which includes the south side of the Supercenter.

Third, Section 17.58.1 10 states, "No more than sixty percent of the off-street parking area for the lot, tract or area of land devoted to the large retail establishment shall be located between the front facade of the large retail establishment and the abutting streets (the Front Parking Area). The front parking area shall be determined by drawing a line from the front corners of the building, parallel with the building sides, straight to the public street forming a ninety degree angle with the front facade." When we do this on the Preliminary Landscape Plan diagram attached to the staff report, we see that the "Front Parking Area" of the Supercenter Project contains approximately 664 of 978 spaces on the Supercenter lot or 67.9%. This percentage of stalls in the Front Parking Area creeps even higher to 68.8% when the compared against the staff report's statement that "a total of 965 sparking spaces are proposed." In either case, the Project does not comply with the mandatory language of the Zoning Ordinance.

Therefore, contrary to the conclusion in the staff report, the Project does not comply with the City's Design Standards for Large Retail Establishments and, as a matter of law, cannot be approved. Instead, the Council must deny the Project, send the Project back to Staff and the Planning Commission for design revision, or consider a variance from these Zoning Ordinance requirements.

3. Overriding Considerations Inappropriate

Prior to approving the Project, the Council must make mandatory CEQA findings (Guideline§ 15091) including a statement of overriding considerations which finds that specific benefits of the project outweigh the environmental burdens (Guideline§ 15093). Although the Statement of Overriding reflects a policy decision, it must be supported by substantial evidence in the record.

The evidence in the record does not support these findings. Specifically, the resolution lists 6 overriding considerations; (1) tax generation; (2) employment creation; (3) municipal infrastructure development; (4) plan implementation; (5) high quality design; and (6) energy saving features. Of these six, the later four only benefit development of the property but do not provide citywide benefits and therefore are of no consequence as overriding considerations. The first two, tax generation and job creation, are relevant to the discussion. Only if the Council finds that the project will create sufficient taxes and jobs, based on substantial evidence, it may approve the project. In this case, that evidentiary foundation is lacking.

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Regarding tax benefits, as discussed in detail during the March City Council hearing on this project, Wal-Mart has been all over the board on its tax benefit numbers: from as low as \$1 35,000 to as high as \$1.3 million. In 2004 the City's consultant ADE concluded the City would see a tax increase of about \$1 35,000 from the Project. In October Wal-Mart indicated the Project would generate approximately \$1 90,000 (\$790,000 minus \$600,000 from existing Wal-Mart). A December 2008 report Economic Professors Philip (SFSU) and Sharmila King (UOP) concluded that the Project would likely generate a net \$1 43,000, which is offset by other closed businesses and resulting loss of revenue. In March, Wal-Mart presented a report from its consultant CBRE concluding the Project would produce a \$1.364 million sales tax benefit to the City. In this case, the \$1.364 million is extreme and wholly inconsistent with the \$135,000 to \$1 90,000 suggested by others including Wal-Mart. Thus the Council must decide which figures – if any – it believes and must determine whether the net gain is offset by costs of additional police service, additional code enforcement, and lost business in Lodi.

A similar problem exists with the overriding consideration for job creation. The employment benefits from the Project are unknown. We are told anywhere from 600 to 1000+ jobs will be created by the project. However, this is an unacceptably broad range and the record does not reveal the source of these conclusions. More pointedly, the record does not disclose how many of these jobs will be relocated (and lost) from the existing Wal-Mart store, as well as from existing retailers in the community who may close or engaged in lay-offs due to the Project's decrease in revenues. In short, assuming for sake of argument the Project will create 800 jobs, if 400 of these come from the existing Wal-Mart store, and three existing grocery stores close (losing an additional 400), you are down to a zero net job creation. Following this line of reasoning, the Project could actually contribute to negative job creation.

Simply stated the Council does not have sufficient information to support the findings and therefore cannot make the mandatory findings of overriding consideration.

For these reasons, the Council should deny the Project.

Very truly yours,



BRETTS. JOLLEY
Attorney-at-Law

AREA A = 664

AREA B = 187

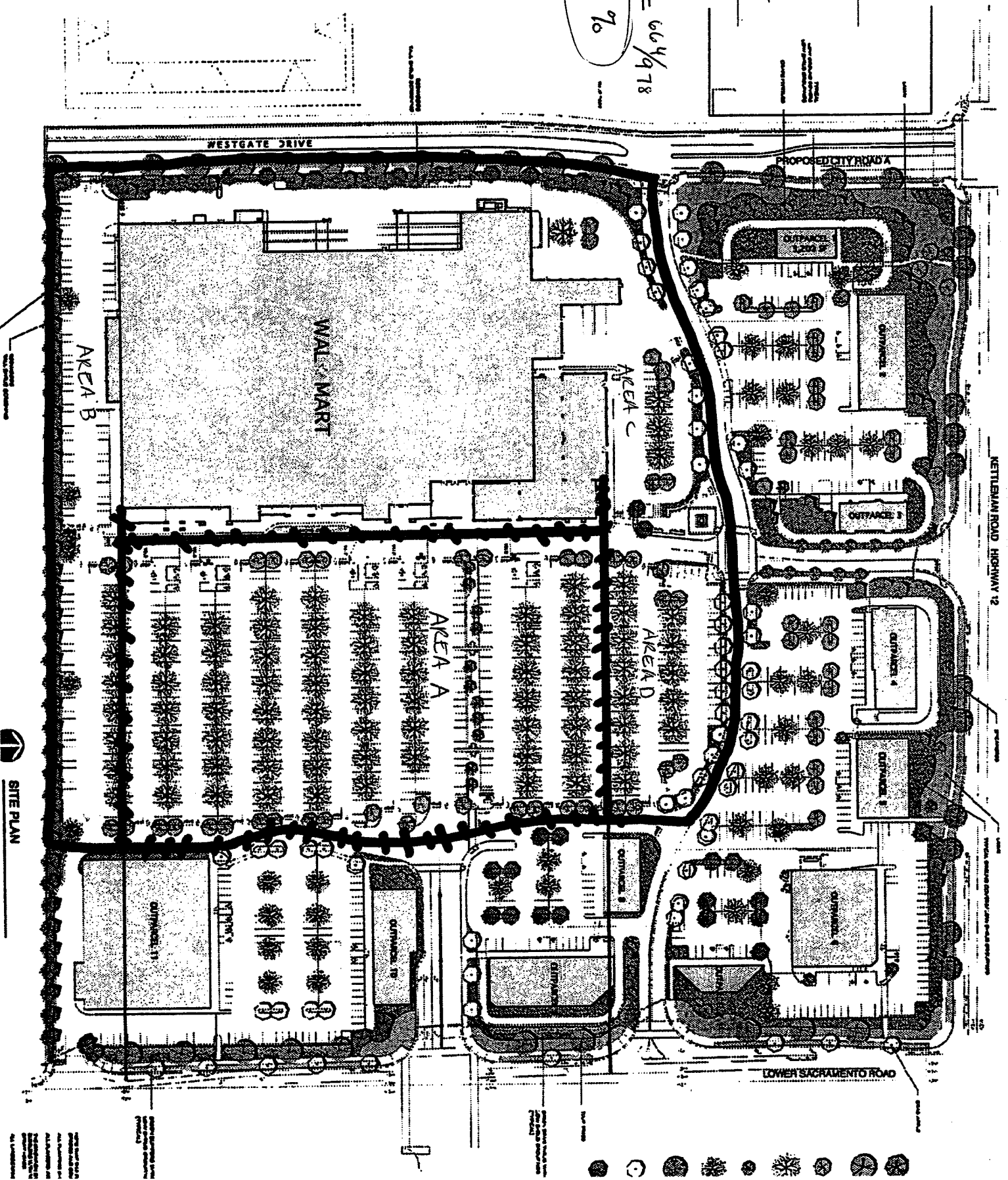
AREA C = 36

AREA D = 125

Total = 978

% in AREA = $\frac{664}{978}$

67.9%



 SITE PLAN

KETLEMAN ROAD HIGHWAY 12

AREA A = 664

AREA B = 187

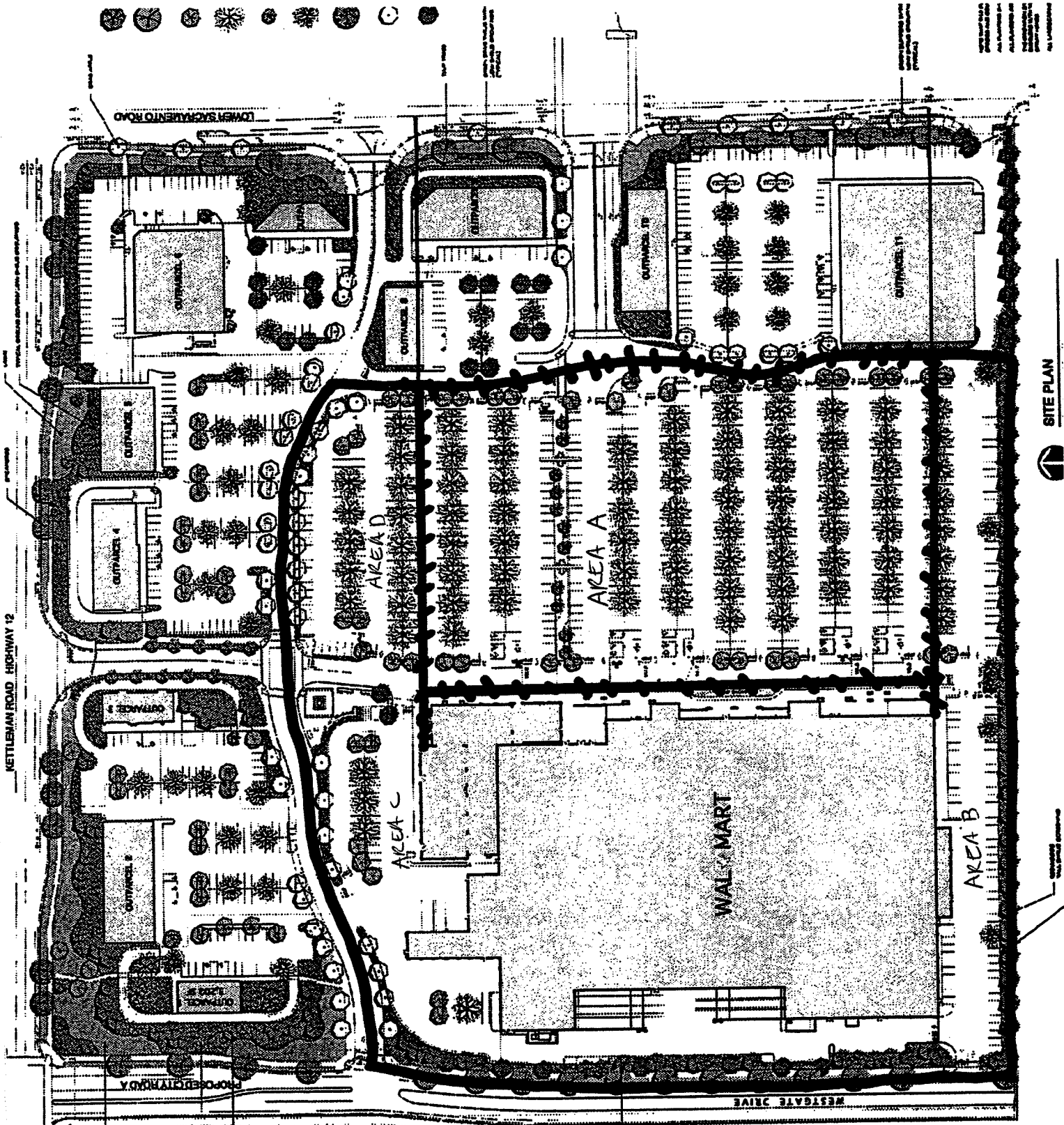
AREA C = 36

AREA D = 125

Total = 978

% in AREA = $664/978$

67.9%



SITE PLAN

NOTICING REQUIREMENTS



***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

**SUBJECT: PUBLIC HEARING TO CONSIDER APPEALS FILED REGARDING THE
LODI SHOPPING CENTER**

PUBLISH DATE: THURSDAY, APRIL 30, 2009

LEGAL AD


TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO:

RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: TUESDAY, APRIL 28, 2009

**ORDERED BY: RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS Faxed to the Sentinel at 369-1084 at 3:20pm (time) on 4/28/09 (date) 2 (pages)
Phoned to confirm receipt of all pages at (time) CM JMP (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER ALL OF THE APPEALS THAT HAVE BEEN FILED REGARDING THE DECISION OF THE PLANNING COMMISSION TO DENY USE PERMIT (U-02-12), VESTING TENTATIVE PARCEL MAP (03-P-001), AND SITE PLAN AND ARCHITECTURAL REVIEW (08-SP-08) CONCERNING THE LODI SHOPPING CENTER LOCATED AT 2640 WEST KETTLEMAN LANE; AND FURTHER CONSIDER ADOPTING THE FINDINGS AND STATEMENTS OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

On Friday, May 1, 2009, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider all of the appeals that have been filed regarding the decision of the Planning Commission to deny Use Permit (U-02-12), Vesting Tentative Parcel Map (03-P-001), and Site Plan and Architectural Review (08-SP-08) concerning the Lodi Shopping Center located at 2640 West Kettleman Lane; and further consider adopting the findings and statements of overriding considerations pursuant to the California Environmental Quality Act (attached and marked as Exhibit **A**) was posted at the following locations:

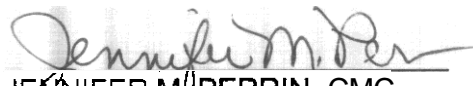
Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2009, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER ALL OF THE APPEALS THAT HAVE BEEN FILED REGARDING THE DECISION OF THE PLANNING COMMISSION TO DENY USE PERMIT (U-02-12), VESTING TENTATIVE PARCEL MAP (03-P-001), AND SITE PLAN AND ARCHITECTURAL REVIEW (08-SP-08) CONCERNING THE LODI SHOPPING CENTER LOCATED AT 2640 WEST KETTLEMAN LANE; AND FURTHER CONSIDER ADOPTING THE FINDINGS AND STATEMENTS ~~OF~~ **OF** OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

On Wednesday, April **29, 2009**, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider all of the appeals that have been filed regarding the decision of the Planning Commission to deny **Use Permit (U-02-12]**, Vesting Tentative Parcel Map (03-P-001), and Site Plan and Architectural Review (08-SP-08) concerning the Lodi Shopping Center located at **2640** West Kettleman Lane; and further consider adopting the Findings and Statements of Overriding Considerations pursuant to the California Environmental Quality Act, attached hereto marked Exhibit A. The mailing list for said matter is attached hereto marked Exhibit B.

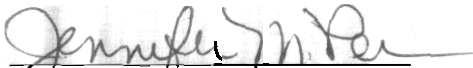
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April **29, 2009**, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI
Hutchins Street Square
125 S. Hutchins St., Lodi

NOTICE OF PUBLIC HEARING

Date: **May 13, 2009**

Time: **6:30 p.m.**

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: **(209) 333-6702**

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Wednesday, May 13, 2009, at the hour of 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at Hutchins Street Square, 125 South Hutchins Street, Lodi, to consider the following items:

- a) Appeals filed by Wal-Mart Stores, Inc., **Browman** Development Company, Lodi First, and PAQ, Inc. regarding the decision of the Planning **Commission** to deny Use Permit (**U-02-12**) concerning the construction of a commercial center in a **C-S**, Commercial Shopping District, and the sale of alcoholic beverages at the proposed Wal-Mart Supercenter; Vesting Tentative Parcel Map (03-P-001) concerning the creation of 12 parcels for the project; and Site Plan and Architectural Review (**08-SP-08**) concerning site plan and architectural review of a proposed Wal-Mart Supercenter at the proposed Lodi Shopping Center located at 2640 West Kettleman Lane (collectively "the Project"); and further consider approval of the Project and consider adopting findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:


Randi Johl

City Clerk

Dated: **April 21, 2009**

Approved as to form:


D. Stephen Schwabauer

City Attorney

May 13, 2009 Special City Council Meeting
PH mailing List for WalMart Super Center Project

EXHIBIT B

APN	OWNER	ADDRESS	CITY	STATE	ZIP
02741007	SACRAMENTO KETTLEMAN LLC ETAL	1954 MT DIABLO BLVD #A	WALNUT CREEK	CA	94596
02742001	GEWEKE FAMILY PTP	PO BOX 1420	LODI	CA	95241
02742003	IN N OUT BURGERS CORP	13502 HAMBURGER LN	BALDWIN PARK	CA	91706
02742013	GEWEKE VIII LP ETAL	PO BOX 1210	LODI	CA	95241
05803005	VAN RUITEN RANCH LTD	PO BOX 520	WOODBIDGE	CA	95258
05803009	REICHMUTH, THOMAS E TR	2541 LYNCH WAY	LODI	CA	95242
05803011	BDC LODI III LP	100 SWAN WAY SUITE 206	OAKLAND	CA	94621
05803012	WAL MART REAL EST BUSINESS TRU	MAIL STOP 0555	BENTONVILLE	AR	72716
05803013	BDC LODI III LP	100 SWAN WAY STE 206	OAKLAND	CA	94621
05814001	TESORO SIERRA PROPERTIES LLC	300 CONCORD PLAZA DR	SAN ANTONIO	TX	78216
05814004	FRAME, DEAN K & SHARON L TR	212 RUTLEDGE DR	LODI	CA	95242
05814006	HERRMANN, CHARLENE K TR ETAL	1200 GLENHURST DR	LODI	CA	95240
05814007	DEL RIO, SANTIAGO M & RAMONA T	15315 N HOERL RD	LODI	CA	95240
05814011	GREVER, ZANE M & PATSY R TR	1432 PARK ST	LODI	CA	95242
05814012	PETERSON, M BILL	PO BOX 473	LOCKEFORD	CA	95237
05814014	PETERSON, RUTH SUSAN	PO BOX 331	SUTTER CREEK	CA	95685
05814042	BARBER VALLEJO PROPERTIES LP	2595 AUTO MALL PKWY	FAIRFIELD	CA	94533
05814044	FIRST LODI PLAZA ASSOCIATES	1556 PARKSIDE DR	WALNUT CREEK	CA	94596
02705021	GEWEKE FAMILY LTD PTP	2475 MAGGIO CIR	LODI	CA	95240

EXHIBIT B

APPEALS REGARDING DECISION OF THE PLANNING COMMISSION TO DENY USE PERMIT, VESTING TENTATIVE PARCEL MAP, AND SITE PLAN AND ARCHITECTURAL REVIEW FOR LODI SHOPPING CENTER

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Kari Chadwick - sent to e-Notification list on 4/30/09 jmx

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